



LETTERS  
TO  
AN OFFICER IN THE ARMY;  
PROPOSING  
CONSTITUTIONAL REFORM  
IN THE  
CONFEDERATE GOVERNMENT  
AFTER THE CLOSE OF THE PRESENT WAR.

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A SUPPLEMENT  
TO  
"THE LOST PRINCIPLE."

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BY JOHN SCOTT,  
OF FAUQUIER, C. S. ARMY,  
AUTHOR OF "THE LOST PRINCIPLE."

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*"Stand ye in the ways, and see, and ask for the old paths, where is the good way, and walk therein. But they said, We will not walk therein."*—JEREMIAH vi. 16.

"There is a great difference between arts and civil affairs; arts and sciences should be like mines, resounding on all sides with new works, and further progress; but it is not good to try experiments in States, except the necessity be urgent or the utility evident; and well to beware that it is the reformation that draweth on the change, and not the desire of change that pretendeth the reformation."—Bacon.

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Entered according to act of Congress, in the year 1864, by

JOHN SCOTT,

In the Clerk's Office of the District Court of the Confederate States for the  
Eastern District of Virginia.

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## DEDICATION.

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This perishable memento, as a testimonial of his great worth, is inscribed to the memory of my dear friend and cousin, Captain THOMAS GORDON POLLOCK, a native of Fauquier county, Virginia, who fell, gallantly fighting, in the fearful assault of Pickett's division at the battle of Gettysburg. It adds to the anguish of his family that his remains were never recovered.

But a short time before the commencement of the war, he had removed to the State of Louisiana to prosecute the profession of law, and was very soon invited into a distinguished and lucrative copartnership. He was among the foremost of the chivalrous spirits of that gallant State in accepting the gage of battle and defending the invaded rights of his country. He commenced the military life as orderly sergeant of "The Shreveport Grays," and at the end of a short time, by his industry and capacity, had mastered the infantry tactics both in their principles and details. Sergeant Pollock accompanied his regiment to Fort Pickens and afterwards to Virginia. Upon his arrival in Richmond, where his character and abilities were well understood, he was tendered a captain's commission in "The Wise Legion," with which he served with credit in West Virginia. Captain Pollock was subsequently assistant adjutant general to Brig. General Starke, and was from that position promoted to the staff of General Lee. At the earnest solicitation of Brig. General Kemper, of Pickett's division, who was well acquainted with his extraordinary qualifications, Captain Pollock was transferred to his brigade, where he was conspicuous for the extent of his executive capacity. He was in many of the great battles of Virginia, and in those around Richmond conducted himself with the courage of a soldier. At one period, I associated on terms of intimacy with Captain Pollock, and thus was made acquainted with his superior merits. Well born and well nurtured, Life had opened upon him with her brightest smiles, and he had already surrounded himself with a large circle of attached friends. He had just passed the line which separates youth from manhood, and was the pride and solace of his honored father, when he was swept into the remorseless grave. But the Omnipotent may have only called him hence for higher purposes, to another sphere—perhaps to one of those fair stars that nightly look upon us.

With every gift and grace adorned, Captain Pollock shone conspicuous among the noble band of youthful heroes whom the Mothers of the South, with a Spartan heroism and the truest Christian fortitude, devoted to the Independence

of their country. When the constellation of peace, with effulgent beam, again irradiates this land, and amid swelling the anthems high column is raised to the victorious God, this costly sacrifice will not be forgotten.

“Young Lycidas is dead, dead ere his prime,  
Young Lycidas, and has not left his peer.  
He must not flote upon his watery bier  
Unwept, and welter in the parching wind,  
Without the meed of some melodious tear.  
So may some gentle muse  
With lucky words favor my destined urn,  
And as he passes turn  
And bid fair peace be to my sable shroud.  
For we were nurst upon the self-same hill,  
Fed the same flock by fountain, shade and rill.”

THE AUTHOR.

# INTRODUCTORY.

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DOVER, GOOCHLAND CO., VA.,  
12th January, 1864.

To Brig. Gen. JAMES L. KEMPER,

P. A. C. S.:

DEAR SIR:

In addressing to you the following series of letters, I feel that I am not acting without sufficient warrant. The subjects discussed are essentially of the highest importance, and in relation to our own affairs give rise to questions, the practical decision of which must deeply affect the value and stability of our political institutions. To such themes I can with confidence invite the attention of one whose former distinction in the politics of Virginia and present honorable position in the Confederate army give assurance of his earnest interest in all that concerns the welfare of the State and the Confederacy.

The matter of these letters, so hastily and unskilfully wrought, was designed to conclude a small volume published before the war. There the structure of the Legislative department of the United States Government, together with some account of its origin, was considered, whilst here your attention is invited to the Executive. The precipitation with which the volume alluded to was prepared for the press, prevented me from doing then what I do now.

Upon resuming the subject thus left incomplete, I soon discovered that the contracted limits of a furlough would be insufficient for the execution of the design, and that the task must be abandoned or abridged. Perhaps not wisely, the latter alternative was adopted; for I have thought it well to bring a kid, if I could not sacrifice an hundred bulls. Haste is not the best helpmate of composition, but rather a retired leisure, and errors, though none serious it is trusted, may have crept in. Even a little time for reflection and a more careful revision, without seeking to enlarge its plan, would have enabled me at once to condense and amplify the essay and relieve it of many blemishes and disfigurements.

The lack of time I the more regret, as established principles have been arraigned and opinions questioned, which in our times, amongst us at least, have not been questioned before. He who assails an adversary so formidable, must needs put all his armor on; not the corslet and shield only, but the lance and the sword. It is cheering, however, to one who presumptuously breaks in upon the current of popular opin-



ion, to know that, amid the heterogeneous elements which compose society, there are always generous and resolute spirits who keep their ears open for even the lightest whispers of truth, and who abhor error, however surrounded and dignified, as the worst enemy of mankind. These, in a Republic, may be called the sails of the Ship of State, or, with perhaps a truer similitude, the winds which agitate the great deep of human opinion. But there is another large class, and not the least influential, who hang as dead weights on the chariot wheels of human progress. A novelty is an offence unto these men. In the wide economy of the universe they doubtless have their uses; for the great Father who created the deaf, the dumb and the blind, as well as the sleeping miasmatic pool, created them. Let us not then quarrel with the supreme dispensation, but in charity believe that their intellectual *vis inertiae* may be necessary as ballast to keep the ship from rolling in rough weather.

Harvey, with much wit, observed, that he had never been able to convince any man above forty years old of the circulation of the blood. Parliamentary government, doubtless, will have to contend with that kind of obstruction. In this country we have all learned to worship an executive throne; and, I believe, the greatest difficulty in nature is to get men out of the rut of an old opinion. You may make progress with the young men; but who can manage the forty-year-olds?

It was my purpose to have examined more at large and with a greater breadth of example, the operations of the Government of the United States, in order the more distinctly and satisfactorily to explain the constant and unavoidable tendency to conflict, between the several departments among which, according to that political arrangement, power is distributed; and at greater length to have scrutinized the action and traced the turbulent and painful history of mixed monarchy, the legacy of mediæval to modern Europe; but at a still greater length and with greater fullness to have followed the course of the memorable struggle between the Crown and Parliament, which, after a long chain of disasters, resulted in placing the British Constitution on its present liberal and impregnable basis. For I am well aware that particular examples, with the reader of discernment, carry a greater weight than any announcement of general results. Ancient authors, too, shed a strong light on the subject before me; for mixed government, though under a different development, is an heirloom of antiquity. The materials were ample and lay near at hand, but I could not more than touch them. Those treasures were not heaped for me.

I own, General, it would be a great consolation to me, if the inquisitive and able minds of the army could all be attracted to the subject here so rudely and imperfectly handled; for, after vindicating by their

valor and heroic constancy\* the independence of their country, the army will still owe it the high moral duty of providing it with the inestimable blessing of a free, stable government. Without this crowning benefit, the victory will be but half won, or rather its precious fruits will be left to turn to ashes in our mouths. What though we be rescued from an oppressive foreign domination, if we be left a prey to angry and barking factions? or be compelled, as a miserable refuge, to cast ourselves at the feet of a domestic tyrant? To preserve themselves and their country from those dreadful evils, all men look, and look not without the solace of hope, to the army in its blended military and civic characters.

The army contains within its ample bosom many an orator and statesman qualified to lead a great people along the heights of honor and renown, trained albeit in the rough, stern school of the camp. For war, even this war, with its ghastly attendants, Slaughter and Famine, will not be destitute of advantages to individual and national character. In this life nothing is wholly good, and nothing altogether evil, that which seemed unmixed evil being sometimes found to cover the largest good; and thus even War, that frequent messenger of God's wrath, is often charged with the evident tokens of divine love. Under his rough discipline, character is invigorated, genius enkindled, enterprise and talent developed, and the slumbering energies of a nation aroused; and through all and over all, strengthening and binding together these constituents of individual excellence and national greatness, an enduring constancy of purpose has its hardy growth—that “patient continuance in well-doing,” without which nothing excellent or great was ever wrought by man or nation.†

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\* “Soldiers, your wants are great; every measure is taken to supply them. The first quality of the soldier is patient endurance of fatigue and privation; valor is but a secondary virtue. Several corps have quitted their positions; they have been deaf to the voice of their officers; the seventeenth light demi-brigade is of this number. Are, then, the heroes of Castiglione, of Rivoli, of Neumark, no more? They would rather have perished than have deserted their colors; they would have called their young comrades back to honor and duty. Soldiers, do you complain that your rations have not been regularly distributed? What would you have done, if, like the fourth and twenty-second light demi-brigades, or the eighteenth and thirty-second of the line, you had found yourselves in the midst of the Desert, without bread or water, subsisting on horses and camels? *Victory will give us bread, said they.*”—NAPOLÉON'S *Address to the Soldiers of Italy.*

† “No body can be healthful without exercise, neither natural body nor politic; and, certainly, to a kingdom or estate a just and honorable war is true exercise. A civil war is like the heat of a fever; but a foreign war is like the heat of exercise, and serveth to keep the body in health; for in a slothful peace, both courages will effeminate and manners corrupt.”—BACON.

Let not despondent spirits deem it premature to call the thoughts of the army to a plan of government for "the so-called Confederate States," but rather let this proof of confidence cheer their drooping hearts. Let it teach enemies and neutrals that, though oppressed with numbers, we nothing doubt the event, but are as confident as that audacious Roman, who, when Hannibal was at the city gates, purchased, for its full value in gold, the field in which his army was camped. Great reverses may be in store for our arms, but there will yet remain, at the hearts of our people, the strong principle of national liberty, imperishable amid the perishable armies of our patriots, inconsumable in the conflagration of our cities. Our trust in the Almighty arm will remain unshaken; for, in the language of a noble historian, we know "Providence reserves to itself various means, by which the bonds of the oppressor may be broken; and it is not for human sagacity to anticipate, whether the army of a conqueror shall moulder in the unwholesome marshes of Rome, or stiffen with frost in a Russian winter."

I will not consume your time with useless explanations and excuses for this hasty production. You will, I trust, need no apology, and the public, I know, would accept none for a clumsy performance.

In this solitary yet delightful retreat, the hours, each belonging to the "same quiet sisterhood," have passed so softly, as to leave no footprint behind. The last of the solemn procession are passing, as I bid you a silent

Adieu.

JOHN SCOTT, *of Fauquier,*  
C. S. Army.

# LETTERS.

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## LETTER I.

Lord NORTH characterized the union which bound the American Republics together, as a mere rope of sand. How great was his mistake! It has proved to be rather a cincture of fire, than so dissoluble a bond.\*

The present sanguinary contest between the two grand divisions of the American Union, the North and the South, as, far back in colonial annals, they were called, without doubt was produced by the Constitution of the United States, as practically expounded in the administration of the Government, though not as that instrument has been explained by a school of ingenious statesmen. Under its silent yet powerful operation, there grew up in the North, by nature far the least favored section, a dominion of irresistible strength, which, after wielding from the beginning, for its own exclusive advantage, the vast legislative authority of the Union, boldly seized the executive office. Flushed with a progressive success, and fortified in the supreme control of the active departments of the common government, which drew after it, according to the Federal plan, as absolute a power over the judiciary, the leaders and exponents of Northern policy ill concealed, if they did not openly proclaim, the intention of their association to change the character still farther of the Government, so as to dispose of the domestic interests and mould the domiciliary institutions of the southern section according to their pleasure. The constitution, which held so closely together the opposing sections, had been so contrived by its sage architects, as to inspire these extravagant and lawless hopes, and to allow, if not to invite, these ambitious designs. Never did a more imminent crisis threaten a free people. Hesitation was ruin, and no other course was left to the victim, thus devoted to the infernal gods, than to appeal to the traditions of their ancestors, and withdraw from the ill-starred and treacherous association.

In accusing the Federal Constitution, the fair-spoken Constitution of

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\* It is probable that his lordship referred to the Federal Constitution of that day. But the Union, as we have learned greatly to our cost, was stronger than the Constitution.

1787, as the cause of our sorrows and calamities, as a monster, which, in its rage and lust, has devoured whole cities and plains, I have entered, I am aware, into the domain of controversy. There are those amongst us who still reverence that constitution, mixed as it is of earth and blood, not more for its own imagined perfections, than for the sanctified hands that made it. The Constitution, they affirm, was not in fault, but the wickedness and frailty of man ruined all! Doubtless these apologists are in the right. Had man been perfect, that Constitution, or any Constitution, would have operated well. But for man as he is, the creature of interest, ambition, fanaticism and the other dark passions that deprave and agitate his heart, that Constitution was a cruel deception. It is the particular province of a well made constitution to control the vicious propensities of man, to set interest against interest, vice against vice, and, like a skilful musician, out of the discord to educe harmony. The much censured Articles of Confederation embodied a plan of government which was theoretically good, but the experiment proved that mankind could not be trusted with the voluntary performance of a constitutional obligation. It is a truth that any government which rests upon the virtues of the people only, will fail. Their evil dispositions as well as their virtues must be taken into the account.

There is a test of the value of things which is our fitting guide in judging systems of government as well as characters of men: *A good tree bringeth not forth corrupt fruit; neither doth a corrupt tree bring forth good fruit.* It is well for us to apply this divine rule to the Constitution of the United States and its legitimate effects. It is well for us to know what is the true character of that instrument; to draw aside or more rudely to tear away the venerable error that shrouds the idol; for, with superficial changes, we have now that Constitution, with all its imperfections on its head, as the permanent organic law of this Confederacy; and there is nothing in the condition of the country or the character of the people to prevent it from working here, in its full fruition, though on a less gigantic scale, the same disastrous results—a sectional despotism, secession, war, and a military supremacy.

It is extremely doubtful whether any close political union could have been long maintained between two nations so opposed in their interests and social and political tendencies as were the North and the South; but a well balanced and skilful organism would have protracted their connexion, and when the hour of separation had come, would have enabled either party to retire from the copartnership without a breach of amicable relations. That would have been a noble solution of a prejudicial and distasteful union, a provision for which posterity, always the innocent victims of the selfishness, the folly and the arrogant presumption of their ancestors, had a right to expect from a body of statesmen, who,

trying a *political experiment*, made a constitution upon full deliberation and without the pressure of external violence.

The signal error of those sages, as they are generally esteemed, was that they did not confine themselves, according to the design and tenor of their instructions, to a simple revision and amendment of the existing federal articles, with the imperfections of which experiment had made, them acquainted. But the ambitious spirit of innovation, like an evil genius, appeared to possess all minds—at least those that directed the deliberations of that convention—and moved them to cast down the old government and to build on untried foundations an edifice in proportions and materials new and unparalleled in design. They were of too enterprising and haughty a temper to tread, with the sage adviser experience, the humble path of amendment, but sought to rival or eclipse the honors of ancient lawgivers. It is the melancholy privilege of those upon whom the shipwreck has fallen, to condemn, or at least to deplore the enterprise of those bold mariners, who, without chart or compass, or even the guiding lights of heaven, sailed beyond the Pillars of Hercules, into the waters of the unknown sea.

There were those it is true who saw and endeavored to restrain the madness of the hour, and it is to those men, and not to their successful opponents, that a discriminating posterity will award the palm of wisdom.

The author of the "Consulate and Empire" utters some sage reflections on the asserted capacity of a man, or a body of wise men, if wise men could be brought to undertake so hazardous a business, to create by the unassisted power of mind, a government for a large political society—a fatal delusion which to so great a degree has existed in America. These reflections come with a greater weight from a philosopher of France, where too they have gambled to excess in stocks of that kind.\*

"There was, however," says Thiers, "a task which was generally assigned to Sieyès—that of preparing the new constitution, which the provisional consuls were charged to digest, and to propose to France without much delay. At this period people were still somewhat imbued with the ideas of the eighteenth century; it was less generally, but yet too much believed, that human institutions might be purely the work of mind, and that the constitution of a nation might spring ready-made from the brain of a legislator. Assuredly, if the French Revolution must have had a Solon or a Lycurgus, M. Sieyès was worthy of being so; but there is only one real legislator in modern times—that is experience. This idea was not so common then as it is now-a-days, and it

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\* Talleyrand, Bishop of Autun, boasted that he had sworn to *seventeen* constitutions. The poet says, at lovers' perjuries the gods laugh, and it is hoped they deal as leniently with politicians. Else it may go hard with others besides the Bishop of Autun.

was universally agreed that M. Sieyès should be the author of the new constitution: this was hoped, this was said; it was asserted that he possessed one, which was the result of long meditation; that it was a profound, an admirable production, and that, being now rid of the obstacles which the revolutionary passions threw in his way, he could bring it forward."

I am, sir, very forcibly reminded here of the litter of constitutions, each unlike the other, which were carried by their arny projectors to Philadelphia. Madison and Sieyès were both men of remarkable genius, but why smile at the extravagant presumption of the Frenchman, and extol the other for a sage? \*

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\* Madison, it is true, did not produce a distinct plan of a constitution, but he claims to have had a hand in the one brought forward by Edmund Randolph. Whether justly or unjustly, whether for good or for evil, his admirers claim for him the honor of being the father of the Constitution of the United States.

## LETTER II.

In no part of the Constitution framed by the Convention of 1787 is the love of novelty so strikingly displayed, as in the structure of the executive department; power there being deposited in a single magistrate chosen by the people. Besides being furnished with a veto on legislative action, the execution of the laws, the command of the army, and a more than regal patronage, that powerful functionary is rendered irresponsible for his official acts, so long as he abstains from the commission of crimes. Being invested with the representative and popular character, he has ever proved, as was doubtless foreseen, a successful competitor with Congress for popularity and public support. It is extremely difficult to understand how the convention could have designed their president to be the chief magistrate of a Republic. An officer so endowed more nearly resembles a powerful elective monarch divested of his crown and robes. This infusion of the principle of monarchy into the Constitution, was a radical departure from that republican federative system already established, and had it stood alone, would have made the Constitution of the United States, what its fabricators proudly represented it to be—a *new, a national government*. “Thus upon the body and stock of the ancient polity was inoculated a scion alien to the nature of the original plant.”

“A spirit of innovation,” says Burke, “is generally the result of a selfish temper and confined views. People will not look forward to posterity, who never look backwards to their ancestors.” The Convention of 1787, whilst they turned their backs upon the past, closed their eyes to the future—ignoring and despising their predecessors, whilst they gambled with the happiness and liberty of posterity.

The executive office, under the Confederation, was deeply impressed with the republican nature of the government to which it belonged, being exercised not by a single and independent officer, but by a council of ministers appointed by Congress and kept under its superintendence. There could be no inducement or provocation for the legislative power to encroach upon the proper functions of the executive; the executive could not encroach upon the jurisdiction of the legislature. This stamped the Confederation, which Mr. Jefferson, as we have elsewhere seen, has so highly extolled, as a parliamentary government, in contradistinction to those which partake of the monarchical or executive character. In governments of this nature, the legislature, composed of the



representatives of the people, and deriving its inspirations from them, governs society, the executive, so important in its effects, being placed in a subordinate and responsible position.

The teachers of the Common Law inculcate that the execution is the life of the law, an elementary truth which rests on the firmest foundations. But if the execution is the life of the law—without which all legislation is only a nerveless body—the administration of the government is as truly the life of the government. It is one of those active necessary functions upon which the existence, or at least the health and efficiency of the government so entirely depends, that it is impossible to attach too high an importance to its proper organization. Indeed, every officer charged with the execution of the laws, exercises, of necessity, some portion of judicial power, since it is necessary to interpret the meaning of laws before they can be carried into effect. It is possible, then, for the executive official to defeat or at least impair the policy of the legislature, or to give it full force.

Sound theory, then, in a parliamentary government, (since with some it is important that political systems should be cast in conformity with metaphysical exactness,) or rather its very purpose, requires the executive to be kept in relations of dependence on the legislature. Where those constitutional connexions are established, a correspondence and concert of action is enforced, and that counteraction of parts avoided, which is so malignant in its effects in practical government. Thus one spirit, one design, animates the whole, so that what is determined in wisdom is executed with fidelity and vigor. But great and intense is the evil where an independent Executive wields the tremendous power of the veto and is invested with an extensive patronage, which is power in its most seductive and irresistible form. The Legislature, then, must in the end succumb. So much more potent in human affairs is action than deliberation. This is the moral of all history, and is one which considerate men will never forget.

When Bonaparte was associated with Sieyès in the consulship, he quickly agreed to a division of power with his philosophic colleague. "Sieyès," says the author already quoted, "was to be the legislator and General Bonaparte the administrator of the new government." In no part of his astonishing and tumultuous career did that remarkable genius display a more subtle and profound penetration. Whilst the philosopher was engaged with his political systems, his rival electrified France by his administrative power, and paved the way to the empire, which he presently took possession of.

Roger Sherman, one of the clearest and best thinkers in the Convention of 1787, with ability and zeal opposed the introduction of a single person into the executive magistracy. He contended that *the executive*

*was nothing more than an institution for carrying the will of the legislature into effect; that the person or persons ought to be appointed by and accountable to the legislature only, which was the depository of the will of society.* I have placed these golden words in italics, because they contain a great principle of free government, expunged though it was by the Constitution of the United States. In this change, the authors of it disclosed the secret leanings of their opinions. They appear in truth to have lost confidence in the capacity of the people for self-government. They were thus placed in a false position, when they assumed the task to frame popular institutions and became as the advocates and propagators of popular ideas, teachers of what they did not believe. Hence it was that, in a Republic, they set up a single magistrate as the sole depository of the executive power, and allowed him, by his great patronage and his veto, to control legislative action; that they invested him with a great administrative discretion and made him as little responsible for its exercise as any potentate of monarchical Europe. When Patrick Henry perused that instrument, which after so painful a travail had been brought forth at Philadelphia, he placed his finger upon the executive and pronounced it to be *the rotten part of the Constitution.*

The proposition so distinctly and forcibly announced by Mr. Sherman was not controverted by a single member of the Convention. But the combined exertions of Wilson, Madison, the Pinckneys, Rutledge and Gouverneur Morris, aided by the influence of Gen. Washington, bore down all opposition. It was in vain that Edmund Randolph, at that time Governor of Virginia, denounced the plan as containing "the foetus of monarchy." It was in vain that Sherman reiterated the doctrine "that the executive ought to be appointed by the legislature and dependent on that body, as it was the will of that which was to be executed. *An independence,*" added he, *of the executive on the supreme legislature, was, in his opinion, the essence of tyranny, if any such thing existed.*" It was in vain that Doctor Franklin remonstrated against the proposed changes. It was in vain that George Mason, one of the wisest men of that day, lifted up his voice against it. "We are going, Mr. Chairman," said Mason, "very far in this business. We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one. We are introducing a *new principle* into our system and not necessary as in the British Government, where the king has greater rights to defend. Do gentlemen mean to pave the way to hereditary monarchy?" Doctor Franklin agreed with Mr. Mason. "Col. Mason," said he, "had mentioned the circumstance of appointing officers. *He knew how that point would be managed.* No new appointments would be suffered, as heretofore in Pennsylvania, unless

it be referred to the executive; *so that all the profitable offices will be at his disposal.* The first man put at the helm will be a good one. Nobody knows what sort will come afterwards. The executive will always be increasing here, till it ends in monarchy."

But it was Morris, ever avowed in his preferences for kingly power, who revealed the unspoken wishes of his party. He plainly told the Convention, that "one great object of the executive was to *control* the legislature."

But Madison, as if to break the force of that frank avowal and substitute his own subtle and deceptive logic, insisted, "If it be a fundamental principle of free government, that the legislative, executive and judicial powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same and perhaps greater reason why the executive should be independent of the legislature than why the judiciary should."

This, sir, appears to be a strange doctrine to proceed from an authority so respectable, but it contains the seeds of the executive and monarchical government. No two departments and no two classes of powers stand upon grounds more widely different than the executive and judicial. The acknowledged province of the judiciary, under a system which defines the powers of government, is to restrain political action within the prescribed limits. It is the bulwark of the Constitution. An independent will, coupled with and strengthened by an independent tenure of office, has been found to be indispensable to enable a court, which, being removed from the sphere of active business, stands alone on its rendered reasons, to perform with success this delicate and important duty. So august a tribunal ought to be surrounded with the strongest barriers which prudence and foresight could devise. The experience of the judiciary of England, which opens some of the darkest and most criminal chapters in her history, abundantly proves this. But without doubt these reasons apply not to an executive organ, which is but the hand of the legislature. To supply it with an independent will, would be as great a solecism in the political, as in the natural body. The example of Great Britain, as we shall presently see, applies here too with full force; for after a long and painful experience, whilst they have established the independence of the judiciary in that country upon the most solid foundation, they have, by force of arms, reduced their executive to obedience to the legislature.

The functions of the three departments, into which all government naturally falls, ought to be exercised separately; but independent wills are not necessary to secure this end. A simple declaration of the fundamental law, except as to the judiciary, is quite sufficient, even where the legislature appoints the incumbents of the other departments. But

if the legislature should attempt to intrude upon the executive, and exercise the functions belonging to that organ of the government, an appeal to an independent and enlightened judiciary sets all right. The experience of Virginia, under securities of that nature, is believed to be alone a full and satisfactory answer to the argument, or rather the opinion of Mr. Madison.

## LETTER III.

As we all know, the Articles of Confederation, after difficulty and delay, were prepared by the Continental Congress. The colonial experience had taught the men who composed that body, that collisions ensue when an independent Executive is permitted to exercise a controlling power over the Legislature. Indeed, collisions almost as fierce, had occurred between the provincial legislatures and the royal governors, as between the House of Commons and the Princes of the House of Stuart. Those statesmen, consequently, when they came to frame a new polity, wisely settled these quarrels in advance, by placing the Executive on a footing of subordination to the Congress. In this they but imitated the principle of the Constitution framed for Virginia by the plastic hands of George Mason.

Executive power under the Confederation, though sound in its characteristic principle, was nevertheless far from being perfectly organized and developed. That work had been left for Congress to perform, assisted by the lights of experience. That first experiment in federal government in America failed, but the failure was due to the imperfect attributes with which the government of the Confederation was endowed, not to defects in the structure of its executive department. There could not be adduced a more authoritative witness to the correctness of this assertion than Mr. Madison. It will be noted by you, that in the following comprehensive and lucid statement of the defects of that Constitution, the Executive is not included. Further on, and in another connection, the criticisms of Mr. Jefferson will be considered.

"The principal difficulty," says Mr. Madison, "which embarrassed the progress and retarded the completion of the plan of the Confederation, may be traced to—first, the natural repugnance of the parties to a relinquishment of power; secondly, a natural jealousy to its abuse in other hands than their own; thirdly, the rule of suffrage among parties whose inequality in size did not correspond with that of their wealth, or of their military or free population; fourthly, *the selection and definition of the powers, at once necessary to the federal head, and safe to the several members.*

"To these sources of difficulty, incident to the formation of all such confederacies, were added two others, one of a temporary, the other of a permanent nature. The first was the case of the crown lands, so called because they had been held by the British Crown, and being ungranted

to individuals when its authority ceased, were considered by the States within whose charters or asserted limits they lay, as devolving on them; whilst it was contended by the others, that, being wrested from the dethroned authority by the equal exertions of all, they resulted of right and in equity to the benefit of all. The lands being of vast extent, and of growing value, were the occasion of much discussion and heart-burning, and proved the most obstinate of the impediments to an earlier consummation of the plan of federal government. The State of Maryland, the last that acceded to it, held out, as already noticed, till the 1st of March, 1781, and then yielded only to the hope that, by giving a stable and authoritative character to the Confederation, a successful termination of the contest might be accelerated. The dispute was happily compromised by successive surrenders of portions of the territory by the States having exclusive claims to it, and acceptances of them by Congress.

“The other source of dissatisfaction was the peculiar situation of some of the States, which, having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, through whose ports their commerce was carried on. New Jersey, placed between Philadelphia and New York, was likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms. The Articles of Confederation provided no remedy for the complaint, which produced a strong protest on the part of New Jersey, and never ceased to be a source of dissatisfaction and discord, until the new Constitution superseded the old.

“But the radical infirmity of the ‘Articles of Confederation’ was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so many independent communities, each consulting more or less its particular interests and convenience, and distrusting the compliance of others. Whilst the paper emissions of Congress continued to circulate, they were employed as a sinew of war, like gold and silver. When that ceased to be the case, and the fatal defect of the political system was felt in its alarming force, the war was merely kept alive, and brought to a successful conclusion, by such foreign aids and temporary expedients as could be applied; a hope prevailing with many, and a wish with all, that a state of peace, and the sources of prosperity opened by it, would give to the Confederacy, in practice, the efficiency which had been inferred from its theory.

“The close of the war, however, brought no cure for the public embarrassments. The States, relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power, instead of a diminished disposition to part with it, persevered in omissions and in measures incompatible with their relations to the Federal Government, and with those among themselves.

“Having served as a member of Congress through the period between March, 1780, and the arrival of peace, in 1783, I had become intimately acquainted with the public distresses and the causes of them. I had observed the successful opposition to every attempt to procure a remedy by new grants of power to Congress. I had found, moreover, that despair of success hung over the compromising principle of April, 1783, for the public necessities, which had been so elaborately planned and so impressively recommended to the States. Sympathizing, under this aspect of affairs, in the alarm of the friends of free government at the threatened danger of an abortive result to the great, and perhaps last, experiment in its favor, I could not be insensible to the obligation to aid as far as I could in averting the calamity. With this view, I acceded to the desire of my fellow-citizens of the county, that I should be one of its representatives in the Legislature, hoping that I might there best contribute to inculcate the critical posture to which the revolutionary cause was reduced, and the merit of a leading agency of the State in bringing about a rescue of the Union, and the blessings of liberty staked on it, from an impending catastrophe.”—*Madison Papers*, vol. 2: p. 690-694.

## LETTER IV.

If the Executive Veto be not necessary to prevent the intrusions of the Legislature, it will not be very easy to assign a sufficient reason for introducing it in a Republic. But if no good can arise from arming a republican official with so potent a weapon, we cannot be at a loss to divine many injurious consequences to follow from it.

In the course of its deceptive argument in vindication of the Presidential Veto, the Federalist, the renowned champion of the Constitution of the United States, contends, that "the great security against a gradual concentration of the several powers in the same department, consists in giving those who administer each department *the necessary constitutional means and personal motives to resist the encroachment of the others*. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. *Ambition must be made to encounter ambition. The interests of the man must be connected with the constitutional rights of the place*. It may be a reflection on human nature that such devices should be necessary to control the abuses of the government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal control in government would be necessary."\*

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\* It is expedient, when practicable, to oppose Jefferson to Hamilton, that Greek may meet Greek, and expedient too, as in this case, to oppose Jefferson to Jefferson.

On the 19th June, 1807, Mr. Jefferson, then President, writes to Governor Sullivan: "In acknowledging the receipt of your favor of the 3rd instant, I avail myself of the occasion it offers of tendering to yourself, to Mr. Lincoln and to your State, my sincere congratulations on the late happy event of the election of a Republican Executive to preside over its councils. *The harmony it has introduced between the legislative and executive branches, between the people and both of them, and between all and the Federal Government, are so many steps towards securing that union of action and effort, in all its parts, without which no nation can be happy or safe.*" He here expresses in the most forcible language, the canon contended for in the text. A faithful adherence to this opinion would have protected Mr. Jefferson from previous as well as subsequent aberrations. Instead of this united action, Hamilton and Madison would have introduced the discordant principle of personal ambition. But Mr. Jefferson does not confine the application of this rule to those narrow confines, but regarding the States and the Federal agent, as but the parts of a great system of government, from which the greatest amount of good was to be derived by their



But for the very reason that men are not angels and that angels do not govern men, it has ever been found, in a republican system, that the alien and hostile principle of a single and controlling magistrate in the executive department is in the end destructive to the government. Can it be either safe or judicious, in order to attain a subordinate object, as well or better reached by other means, to array ambition against ambition and introduce personal and selfish motives as the inducement to official action? It would appear that there could not be devised by the ingenuity and wit of man a more fruitful source of faction, of unprincipled and violent faction, in the highest concerns of society. It would rather seem that no stronger argument could be adduced against such an executive organization than that it must produce that promised fruit—must sow broadcast strife and contention in the government. Indeed, the conflict, beginning with statesmen, but statesmen representing hostile principles of government, would grow soon into a struggle for supremacy, and their rivalry would be communicated to the body of the people. Thus a difference originating in the ambition and personal motives of official characters agitates society and becomes the dividing line of infuriated parties; and the flames of civil war are eventually kindled by questions which had their birth in unworthy or perhaps base motives.

The Federalist misapplies to the executive department a principle which is sound and necessary if applied to the constitution of a legislature extending over a community of opposing interests and social tendencies. But an equilibrium has no place as between the executive and legislative departments of a well ordered republic. Harmony and unity of action, not antagonism, is here the only safe rule. To create

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concurrent operation, he adds, "Your opinion of the propriety and advantage of a more intimate correspondence between the Executives of the several States, and that of the Union, as a central point, is precisely that which I have ever entertained; and on coming into office, I felt the advantage which would result from that harmony. I had even in contemplation after the annual recommendation to Congress of those measures called for by the times, which the Constitution had placed under their power, to make communications in like manner to the Executives of the States, as to any parts of them to which their Legislatures might be alone competent. For many are exercises of power reserved to the States, wherein an uniformity of proceeding would be of advantage to all—such are quarantines, health laws, regulations of the press, banking institutions, militia, &c. &c. But you know what was the several State governments when I came into office. That a great proportion of them were Federal and would have been delighted with opportunities of proclaiming their contempt and opposing Republican men and measures. \* \* \* I look to this, therefore, as a course which will probably be left to the consideration of my successor."

from choice a government of whatever description under the divided empire of two independent and contending wills, would imply as great a schism as if a machine were contrived with two independent centres of motion. The model might captivate the eye, but having no balance-wheel, motion would jostle motion, wheel counteract wheel, until the whole mechanism would fly in pieces.

The Constitution of the United States embraced the principle so skilfully defended by Hamilton in the *Federalist*. But what has followed from bringing into collision those departments of the government? Has the public good been advanced? On the contrary, the policy of the Legislature has been often thwarted and its action paralyzed. The personal motives of individuals, perhaps their ambition, has added fuel to the angry passions of factions and blown them into seven-fold rage.

The constitution of the legislature rested on the basis of a sectional preponderance, and these executive checks may on that account, in some instances, have redounded to the advantage of the weaker section. But such benefits were accidental. Had the legislative authority been properly constructed, the violent antagonisms resulting from an independent executive could have been fraught only with evil.

The Constitution of the United States is old enough to possess a history of its own, and if we look into some of its developments we will understand the ill-consequences flowing from the discordant action of the different departments of the government.

In presenting examples of such discordant action, it will not be necessary to detail or descant upon the numerous instances in which the Congress has, in the brief history of the government, been brought into conflict with the President. They are present in every memory, and establish the strong tendency that exists in governments framed on such principles to engender angry collisions. On the two questions to which I deem it fit now to ask more special attention, the lines dividing the parties arrayed in opposition were not the same as in the cases above adverted to, and the subjects of strife were different; but the examination will bring before us evidences, not less clear and not less important, of the evil consequences which must result in the administration of government by departments independent in design, but antagonistic in effect.

The treaty power is confided to the hands of the President and Senate, and that of legislation is deposited with Congress. But when a treaty has been ratified which calls for legislation, is it the right of the House of Representatives to be consulted in the first place about the treaty, (which was in accordance with Jefferson's opinion;) or, if not consulted, has the House the constitutional power to refuse its consent

to the legislation required to fulfil the terms of the treaty? If we determine that the House is excluded by the terms of the Constitution from participating in the treaty power, and therefore must not be consulted, but is required to pass such laws as are called for by the treaty, the House of Representatives is practically stripped of a portion of the power of legislation which is explicitly put in its hands as a part of the legislature. If the decision be otherwise, the House is let into the treaty power; for almost all treaties require legislation to give them effect.

This is a very striking example of unskilful organization. Here again the Constitution holds out an invitation to divisions in the government, and such divisions have actually occurred. When Jay's treaty was formed during the administration of General Washington, the President addressed a message to the House of Representatives, and the necessary legislation was adopted, but not until the House had passed resolutions sustaining its pretensions. In 1816 the controversy was revived, and it is still undetermined whether the President or Senate can, in exercising the power to make treaties with foreign nations, break down some of the strongest and best defined limitations of the Constitution and practically wield the legislative power; or, whether the House of Representatives, whenever opportunity offers, can lawfully intrude upon the peculiar province of the Executive and Senate.

When Mr. Jefferson acceded to "the Federal throne," (if I may borrow the nomenclature of Alexander Hamilton, but prematurely employed,) he found the jails filled with the victims of the Sedition law, condemned, however, by the regular sentences of the lawful courts. With a promptitude characteristic of a Republican magistrate, who is backed by large majorities, he released those prisoners. Here was another instance of conflicting power. But the President justified his action, and in a letter (September 11, 1804) to Mrs. Adams on that subject thus delivers his opinion: "You seem to think it devolved on the Judges to decide on the validity of the Sedition law. But nothing in the Constitution has given them the right to decide for the Executive, more than to the Executive to decide for them. Both magistracies are equally independent in the sphere of action assigned to them. The Judges, believing the law to be constitutional, had a right to pass a sentence of fine and imprisonment, because the power was placed in their hands by the Constitution. But the Executive, believing the law to be unconstitutional, were bound to remit the execution of it; because that power had been confided to them by the Constitution."

How easy is it for Executive power to grow! Here a Republican magistrate annuls the judgment of a court of record, and *dispenses* with penalties which, in virtue of an act of Congress, had been inflicted by an authorized tribunal.

## LETTER V.

The authority of Mr. Madison has been produced to show that the constitution of the executive power by the Articles of Confederation was not considered as belonging to the defects of that instrument, which called for reformation. Why, then, was the parliamentary government thrust aside by the Convention of Philadelphia and a monarchical executive established? The motives assigned by Madison in the Convention and by Hamilton in the *Federalist* are not satisfactory. They look more like the specious arguments of the sophist than the well-considered and weighty reflections of the statesman.

My own conviction is, that those leading characters had lost confidence in the stability of Republican institutions, and were in consequence induced to introduce that monarchical feature in the government. This impression has been strengthened by the patronage and the military and civil power committed to their President, and his unlimited re-eligibility to office. Nor has it been weakened by the royal state which Washington introduced and observed during his entire presidential term. It appeared as though, with as gentle a shock as possible to the public feeling, he sought to familiarize it from the beginning to what in the end would become a necessity. This was the opinion of Jefferson, a keen observer and prominent actor in those scenes.\* He believed furthermore that the weight of the Federal party was ready at any time to be thrown into the same scale; the Federal party, at that time so powerful from having just cheated Virginia into a ratification of a constitution which her people abhorred, and against which, if her good angel had not deserted her, she would have cheerfully taken up arms then, when the tyranny lay in embryo, as she has since done.†

The memorials of that period abound with proof that the North was unworthy of the noble franchises of a Republic. Indeed, as we are informed by the "*Ana*," a conspiracy had been entered into among the Northern leaders to substitute at that time a government of force for the tottering Confederation. Washington had been consulted. He objected, and pressed instead his plan of a national Republic. His motive it was easy to perceive. If the North were allowed to obey the

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\* See his Correspondence and his *Ana* of that date.

† I ask permission to refer to *The Lost Principle*, where the evidences of that great perfidy are collected.

instincts of nature and bow down before a throne, a dissolution of the Union would have ensued, for the whole heart of the South was Republican. A union of the North and South, both of which he had defended, and with both of which *his* fame was connected, was the grand object of his endeavors. It was of secondary importance whether the liberty and happiness of the South were to be advanced. The Union was the absorbing thought, and rapt in the contemplation of that sublime problem, the man of the stern heart and strong will went forward. Even that sober mind was shaken from its balance by the splendid vision of a great empire to be founded by him; not by the sword as with Cæsar, or Alexander, or Charlemagne, but resting on consent. Therefore must the South and North, though in their natures as separate as order from chaos, be welded together, to be afterwards hurled against each other in dreadful war, because man, proud, ambitious yet blind and feeble man, usurping the functions of the Deity, would attempt to fix the destiny of nations and unite those whom the God of Nations had placed asunder.\*

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\* To Washington's clear comprehension of things, the North exhibited soon after the Revolution a strong appetite for monarchy, but the reverse tendency had been manifested in the South. See Washington's correspondence of that period. The great abilities of Washington demand and must ever obtain sincere respect. But the sycophants around him pushed him on to sanction wild projects, which his own judgment would have condemned.

## LETTER VI.

The eulogists of the Constitution of the United States have always asserted that it was framed on the principles of the English Constitution, with respect to its distribution of power among several departments, and the restraints which they impose on each other, but yet so happily tempered, they insisted, as to surpass its celebrated model; for whilst it secured all and more than all of its liberty, it had afforded to the government stability without aristocracy and vigor without monarchy. This would appear to be high praise, when we see the British Empire, greater in extent than that which obeyed the Cæsars, blessed with liberty and internal harmony and external security. But whether the asserted analogy be true or not true, depends upon the period selected for comparison; for the British Constitution, though in many of its essential parts an old and venerable establishment, has yet been subjected in comparatively recent times to important alterations—alterations, indeed, as we shall soon see, of so material a character as radically to affect the government. In order to bring this part of the subject fully into view, it will be necessary to make an excursion into European history, but it will be a brief one and will not take us out of the common track.

The English Constitution belonged to the class of limited monarchies which prevailed at one period generally in Europe. At first they appeared with a royal executive in conjunction with a council of nobles, and sometimes added a house for the higher clergy. After awhile, as the commonalty rose in the scale of wealth and social consideration, that order was admitted to a participation in representative power; for it was a principle inherent in feudal law that no one of the divisions or states could be subjected to taxation without being admitted first to the privileges of representation.\* So universal were establishments of this nature, that they have been called "The Common Law of Europe." From that soil was transplanted that living germ, afterwards so deeply rooted in America.

This kind of government was derived from the robust principle of German liberty, so averse from vesting without restraint the powers of government in one person. The correspondence of these governments with the divisions of society, and the deliberation which they enforced in political action, as well as the checks they provided on the monarch,

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\* Robertson's History of Charles V

obtained the suffrages of philosophical writers. According to that plan, the powers of legislation were committed to the representatives of the states or orders, each being provided with a separate voice, whilst to the Crown was entrusted the whole executive power, including the disbursement of the revenues, the appointment of officers, and the command of the military forces. In addition, the executive was invested with an absolute negative on the legislative action. It was a powerful counter-balance to this formidable array, that to the legislative body belonged the exclusive right to raise revenue; for without money the prerogatives of the executive power were but little else than baubles. It would have required but little foresight to predict what ensued from that partition of power. Fierce conflicts, accordingly, for the revenue power everywhere took place, the monarch to secure for the crown that coveted privilege, the legislative assembly to retain it.

However excellent in theory the constitution of the feudal monarchy, in thus blending opposing and hostile principles of government, we have been informed by the authoritative voice of history that the introduction of self-controlling and independent members did not answer in experiment. From the want of a balance of forces, as well as a balance of rights, an equipoise never to be exactly hit, or continued, the opposition of parts in every instance, save one, destroyed that species of government, and in that single exception, those throned and hostile powers exhibited for each other so violent an antagonism, and struggled each in its turn so fiercely for the supreme control, as to subject all parties, after a long era of civil troubles, to the rule of a military despot.

Upon looking then somewhat curiously into the matter, not being at all satisfied with sounding eulogy, we discover that the applauded theory of the United States Government, about which such learned dissertations have been composed, turns out to be the exploded plan of an impracticable constitution. The credulous multitude once were instructed that the lawgivers of antiquity had received their respective codes from the gods; that Charandos had received his laws for the Carthaginians from Saturn; Draco and Solon for the Athenians from Minerva; Numa Pompilius for the Romans from the Nymph *Ægeria*, and Mahomet the Alcoran from the Angel Gabriel; but neither history, nor tradition, nor the sibylline leaves of Mr. Madison, have informed posterity what nymph or archangel inspired the sages of Philadelphia to select as a constitution for an association of sovereign States the frame of the Gothic monarchy.

The constituent parts of those establishments lay long inactive, until moved by the spirit of modern civilization, the angel that troubled the pool of stagnant Europe, when from that stupor they awoke, and began everywhere to operate and encroach on each other. In the continental kingdoms, as soon as the feudal militia was set aside to make room for

standing armies, and that means of coercion placed at the disposal of kings, the old quarrel about the revenue power was soon brought to a close, very much to the advantage of monarchy.

In France, the parliaments had been fostered by the liberality of Charlemagne, and so vigorous did they become, that at one period of their existence they asserted popular rights so manfully, as to lose nothing by a comparison with the resolution and energy of the British House of Commons. In the reign of King John, who, in character, resembled his English namesake, the States confronted him so boldly as not to suffer him to disburse the public taxes, but for that duty appointed commissioners of their own. But an evil destiny awaited them. In France, as in the other nations on the Continent, they passed away with the feudal system out of which those popular assemblies had sprung. In the kingdom mentioned, they perished by artifice or force, as the employment of the one or the other was found most expedient. But so strongly cherished by the nation were those assemblies, that it was discovered to be necessary in the first place to resort to the former. Before the hunters could venture to approach the lion with the spear, it was found necessary first to entangle his limbs with the net. The dagger or the poison-bowl would not compass the end they sought; so they had to devise a plot which required many years to ripen, and draw "a long concatenation of intrigue" before they could overturn that broad-bottomed monarchy.

Instead of the old Parliament, the ancient assembly of the States, a new assembly or Vice-Parliament was set on foot, which served to lull the people into a false security, by employing such insufficient means of redress as remonstrances, petitions and menaces. But the substitution proved a fatal blow. The lesser assemblies were never invested with that dignity and public weight which had attached to the old convocations. It has been quaintly observed of those parliaments, that they exercised not, in their scarlet robes, as great power as their ancestors in their grey jackets.

The crafty genius of Louis the Eleventh destroyed the substantial power of the States, and in his own person, for the first time in France, united the purse and the sword. The presence of an English army in France had postponed a contest between the Throne and the States; but after Charles the Seventh had expelled the English, his son and successor was left at liberty to engage in that enterprise. When Louis the Eleventh became king, he found, he said, the Crown in a state of pupillage, but it should with him attain its majority. There could not have been selected for the wicked purpose of conspiring against the liberties of his country a more accomplished character than this prince. "Perjuries and poisons," it has been said, "were his ordinary weapons,



yet none so devout, none so superstitious, none made the like largesses to the Church. But his masses and his pilgrimages did always portend some strange, horrid murder about to be executed."

Louis had learned from his own experience, that without a trained military devoted to his service, he could not, in the contest with the Parliament, count on final triumph; for in the civil war with which, in the earlier part of his reign, he had to contend, called the War of the Public Good, he had ascertained that his Frank Archers, who had settled homes and sympathies for the proprietary class, he could not, in his enterprises against the popular liberty, by any means rely on. The Frank Archers were accordingly thrown aside, and the vagabonds and loiterers of the towns enlisted by beat of drum. These, in their turn, were soon discarded, not proving sufficiently supple to the royal purpose, and a body of mercenary Switzers taken into the King's pay. The temple of despotism was then complete. From thenceforward the King collected taxes without the consent of Parliament, and the era of arbitrary government begun in France. A writer, about the middle of the last century, says: "The Parliament of France seems quite antiquated and subdued; the ghost or shadow of the defunct has appeared three or four times since Louis the Eleventh; but to revive that assembly in its full and perfect vigor, requires a miracle like the resurrection." So that we may date the demise of the parliamentary sovereignty in France from Louis the Eleventh. It is in England only, that the ancient, generous, manly government of Europe survives, and continues in its original lustre and perfection.

One after another in the different countries of Europe these assemblies fell into disuse, or were allowed only occasionally to meet. The religious wars which raged so furiously in that country destroyed them in Germany, whilst they were openly put down by the bayonet in Spain.

Lord Macaulay expresses the opinion that on the continent those popular bodies could have been maintained, even after the introduction of standing armies, if adequate constitutional securities had been taken against their being used for improper purposes by the executive power. He does not indicate the nature of those securities, and it is certain that none could have been devised that would have proved of permanent value, and have left the crowned heads in possession of their constitutional prerogatives. A mutiny bill and a responsible ministry, the inventions of English liberty, might have proved sufficient, but they were based upon such a revolution as would have been tantamount to an overthrow of monarchical power. No device could have been framed that would have reconciled those inimical principles contained in the Gothic monarchy, and made them consistent with regular government. This was the opinion of the leaders of the French Revolution of 1789.

After an interval of more than a century and a half, the States-General, on the 5th day of May, 1789, assembled in Paris—a period for ever memorable in the annals of Europe. Then did the States more than retaliate on the Throne the signal injuries the Throne had inflicted on the States. Yet had the States-General met to reform, not to abolish the monarchy, whatever English writers say, as the instructions of the deputies fully prove. But the deep-seated and incurable opposition of the commons to the orders of the nobles and clergy at once showed itself. An embittered and prolonged struggle ensued. The legislative power of the Privileged Orders was suppressed. The commons claimed to represent the nation, as they might well do; for they had so greatly risen in the scale of social importance, and at the same time in wealth and numbers, as to comprehend nearly the entire nation—all the useful, industrious and enlightened classes. That powerful body of democracy could not tolerate in the same government the presence of two distinctly marked bodies of aristocracy, endowed with peculiar privileges, oppressively and jealously guarded. Thus fell one of the persons of that political Trinity; for the Tiers Etat declared that they would not tolerate a veto between itself and the Throne. Royal power they next assaulted, and they reduced it to an entire subordination to the Legislature. But the political changes did not stop here. The dregs of society were stirred and rose to the top, and the national assembly destroyed royalty and finally itself. Thus closed a drama begun in innovation, prosecuted in murder,\* and closed in suicide.

The fate of mixed government on the Continent of Europe has not been such as to invite a prudent people to imitate that example.

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\* When Louis the Sixteenth opened the States-General, covered with the crown jewels, Mirabeau observed to those around him, "Behold the victim adorned for the sacrifice."

## LETTER VII.

On account of the insular position of England, the fate of feudal monarchy there was different. There no standing army was placed subject to the Crown, and there alone the Crown did not usurp the supreme control. Indeed, events in that country took a different direction, physical power being placed in the opposite scale. The monarch, instead of placing his foot on the prostrate estates, was, from the sheer force of necessity, compelled to surrender, contracting only to retain his court pageantries, his crown and royal revenues; but in all things which concerned the power of his office, consenting to be the obedient instrument of the House of Commons. The moral of that story is instructive, and teaches us how much of accident, how much of God's grace, how much of the golden ores of human prudence, are compounded in the grand old government of England.

It ought not to surprise us that, when William the Norman brought over with him and his mailed warriors the feudal system, as most advantageous in monopolizing the wealth and power of the country, and keeping in subjection the sons of the soil, there should have fallen to the Crown great riches and authority, nor that a large portion of each should have been engrossed by the nobles, nor that the conquered Saxons should have been divested of all privileges (as what conquered people has not?) except the naked boon of life and the service of foreign masters. At that day there were no Commons, no third estate. All were master and slave—the King and great feudatories and great clergy, the lords temporal and lords spiritual, looking down in sullen tyranny on their fettered bondmen. The Commons, the proud, ambitious, intelligent and indomitable Commons, with their heroic love of liberty, yet tempered always with a respect for order and a veneration for authority, existed not. They lay then in Norman chains and did not cast them off for many ages.

But the spoilers, the King and the great Barons, could not live forever in peace, nor indeed for any long time, and quarrels about supremacy took place between them. One epoch is marked by the great Charter which at Runnymede they compelled King John to sign. But the feud still waxed hot, the Crown seeking to diminish the power of the great Barons, some of them almost its equal; the Barons seeking to establish such an influence over the Crown as to render their order the supreme power, ruling England with the firm sceptre of an

aristocracy, holding under them a servile and conquered populace, and a King with only a permitted state, a sort of doge. The great question was tried, for the broil came to a positive and final issue, and the champions were worthy to represent their respective parties. The King, young, chivalrous, able, popular, who scorned to wear a dependent Crown, and old Warwick the King-maker. The King, no match for the doughty old Earl, was driven to seek the people's alliance. Here, then, the skies began to brighten with the approaching dawn of English freedom. The respectability of the position of the Commons was assured as soon as one of the combatants, in order himself to escape the yoke, had found it expedient to court the people and balance them against the power of the other. Old Warwick, for so the gods had decreed, went down in the tourney. Soon after, the Crown rose to an almost undisputed supremacy in England, and the monarchy settled on its foundation firmly, and, as men thought, securely forever.

Under the auspices of the royal authority the government remained, but sometimes oscillating violently to and fro, and sometimes heaving deeply with the bursting of internal fires, until after the despotic, yet popular and eminently successful, reign of Elizabeth, the last and greatest of the Tudor line.

We have seen how the Barons strove with the Crown for the absolute rule. We will now see that the two estates, in the final act of that eventful drama, with combined powers, the Commons leading the way and always the principal combatant, struggle with the Crown, and, as the final result, place themselves in the ascendant, and build up the great Parliamentary Government of Great Britain, the glory of that kingdom and of all times.

## LETTER VIII.

The union of the Crowns of England and Scotland, an event prepared by the politic forecast of Henry the Seventh,\* at this time occurred, in the person of the great grandson of Margaret, the daughter of that monarch. The legislative union, or incorporation of the kingdoms, so earnestly desired and recommended by King James, was postponed to a later period. This increase of weight and dignity to the Crown, added to the submission of Ireland and the great reputation for wisdom which the Scottish monarch had brought with him, appears to have roused into a strong and steady activity that great party which regarded with apprehension the growth of royal influence and power. The new King was hardly acknowledged and proclaimed, when Parliament began to operate in this direction.

The critical state of the kingdom with respect to external enemies and internal foes alone had prevented this conflict from having been begun during the preceding reign. Elizabeth had mounted a throne just vacated by a Catholic princess, to reign, as many contended, over a Catholic people.† The nation was in peril from the fleets and armies of Spain, and the life of the Queen from conspiracies, which had their ramifications in every Catholic country of Europe. It was doubtful which religion would in the end prevail, which faction predominate, and it was necessary for all who wished well to a Protestant succession to

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\* Bacon's History of Henry VII.

† It is asserted that the great change in religion, under Elizabeth, was carried by six votes, and passed in a single session; that "a superstitious" practice (the striking of the breast with an exclamation) observed at the elevation of the Host, was abrogated by a single vote, and that no greater majority decided on the abolishment of parts of the ceremonial.

On the accession of Elizabeth, the Romanists were so numerous, that one of the English historians asserts that they formed two-thirds of the nation.

She deemed it advisable that a Roman Catholic Bishop should place the Crown upon her head, and in her royal councils Catholics were mixed with Anti-Catholics. The Queen, from the first, looked forward to that conformity in the national religion, which, to enforce afterwards, caused the despair of our statesmen, the unhappiness of the people, and the fall of the government.

But if Elizabeth were studious of the feelings of her Papists on several nice points, she received no indulgence from them; that sort of gratitude could not be returned by an implacable and immutable power.—D'ISRAELI, *Hist. Charles I.*, vol. i., pp. 149-51.

strengthen the hands of the Queen, for upon her life and the vigor and success of her administration depended the success of the Protestant cause. It was evident that this was no time to raise questions which would divide Protestant subjects from a Protestant Queen. The Puritans, who constituted so large an ingredient of the Parliamentary party, were restrained by such considerations, notwithstanding the vigorous persecution with which they were visited.

But when the King of Scots succeeded to the throne, the condition of the country had materially changed. The power of Spain had diminished, whilst that of France, under the genius and courage of Henry the Fourth, a cordial ally of England, had risen to be a counterweight in the balance of Europe. Religious animosities, too, had become greatly mollified, indeed, to so great an extent, as to flatter James with the hope that by dexterous management and the adroit employment of king-craft, of which he considered himself so great a master, he would be able to re-unite, as far as his own dominions were concerned, the two religions which so unhappily divided Europe. It seems to have been the fortune of this monarch to have entertained the largest and most philanthropic designs, both in Church and State, but to have lacked the ability to carry any of them into effect.

Now was to begin the final struggle between the antagonistic principles in the feudal government, and mankind were to see whether the kingly principle, victorious everywhere else in Europe, was to be victorious too in the little continent of Great Britain. Such a catastrophe the leaders of the Parliamentary cause were determined to avert. They embarked warily yet resolutely upon the great enterprise of abridging the Prerogative and settling the privileges of the two Houses on a surer basis.

Fortunate it was for the liberties of mankind, that, at this critical period, the interests of human freedom were committed to the hands of some of the greatest men who have flourished in British history. The Constitution had beyond question vested in the Crown many great prerogatives, which from the Conquest it had habitually employed and which, fully enjoyed, would have rendered the monarch absolute. He had the right to declare war, appoint officers, direct hostilities and conclude peace—in short, the whole war power in its extensive branches. A reasonable interpretation of the Constitution, without doubt, would place at his disposal the means necessary to give effect to the grant of powers whenever he might in his constitutional discretion exercise them. Parliament, then, according to this view, would be obliged, by an imperative constitutional duty, without hesitation or enquiry, to place at the royal disposal the necessary means. It had not been allowed by the Constitution to participate in the principal power, and it could not in equity

lay hold on subordinate and accidental means in its hands to restrain the King. Such was the view of the Court party, and if it could have been effectuated would have rendered the throne as absolute as any Stuart or Plantagenet could desire. But the Constitution had another side, not so agreeable to kings. Besides the general powers of legislation, a discretionary power over the purse of the nation was placed in the hands of the Parliament. Without money, not only could not war be waged and treaties and alliances made, but the most necessary functions of the executive government could not be discharged. According to this, which was the view insisted upon by the Parliamentary party, the revenue power became the government and could be made to absorb all others, and either destroy the legal prerogatives of the monarch, or compel him to exercise them according to the pleasure of the two Houses.

This subordination of the prerogative was, after many civil troubles, in fact accomplished, and is what Lord Macaulay means when he says, that the history of the British Constitution, from the death of Elizabeth, is but the history of a natural development of the legitimate powers of the Parliament. His Lordship is doubtless right, if we are to look only at the inherent force of the money power as vested in the Parliament, and must allow no weight to the argument which modifies and limits that power in matters involving the life of the Prerogative. But if the despotic schemes of Charles the First had succeeded, and Wentworth had been able to realize his *Thorough*, a name by which he called his plan for raising and supporting a standing army, the Crown would have been able to give life and vigor to all its prerogatives in their full extent. The lion then would have become the painter, and some historian, as philosophic, but not as elegant and striking as Lord Macaulay, would have informed us, that the steps by which the English throne had risen to an undisputed ascendancy and crushed the insolence of the Parliament, were according to the true nature of the English Constitution, and that the potent medicines prepared and administered by the subtle and energetic Wentworth had preserved that constitution by removing some anomalies and obstructions in the administration of the government. Such was the British Constitution when it was copied by the philosophers of America—such the attitude of the model when its form was transferred to the breathing canvas.

As early as the second year of the reign of James (1605), the Commons addressed to the King what they style an “Humble Apology,” in assertion of their privileges. They apprehended the stealthy hand as much as the open violence of power, and announce some general principles applicable to all time.

“What cause we your poor Commons have,” say these apologists,

"to watch over our privileges, is manifest in itself to all men. The prerogatives of princes may easily and do daily grow. The privileges of the subject are for the most part at an everlasting stand. They may be by good providence and care preserved, but being once lost are not recovered but with much disquiet. If good kings were immortal as well as kingdoms, to strive for privilege were but vanity perhaps, and folly; but seeing the same God who in his great mercy hath given us a wise king and religious, doth also sometimes permit hypocrites and tyrants in his displeasure, and for the sins of the people; and from hence hath the desire of rights, privileges and liberties, both for nobles and commons, had its first original; by which an harmonical and stable state is framed; each member under the head enjoying that right, and performing that duty, which for the honor of the head and the happiness of the whole is requisite." (Parl. History, vol. 1, pp. 1034-5.) This very able State paper was prepared by Sir Francis Bacon and Sir Edwin Sandys, two men of the greatest parts and learning in the kingdom.

The line of action adopted by those leaders was skilfully selected: it was to vindicate and clear from all controversy the rights and privileges of the Parliament, which had suffered much from neglect and innovation. Thus strengthened and from this vantage ground, they entered deliberately on the great enterprise of confining within a smaller compass the prerogative, and finally, the scope and end of their policy, of subordinating that department of the government to the legislature. To accomplish this purpose, a studied design on the part of the parliamentary leaders was very early betrayed, but not fully and clearly developed until the subsequent reign. The fate of the mixed form of government on the continent had instructed them that some fundamental change was necessary; for that those two independent authorities could not stand together. Either the executive would preponderate and draw the parliament after it, a captive to register its decrees, or the parliament must take the initiative and subject the executive government.

The money power, so comprehensive in its applications, was the instrument with which the Houses proposed to work in the accomplishment of their beneficent design. It is an interesting fact in the history of this great quarrel, that it was at the instance of Wentworth himself, then a zealous patriot, that Parliament adopted the policy, *that grievances and supply should go hand in hand together*, a suggestion that came back to plague the inventor. Mr. Hume thinks that it marked a constitutional epoch, when the King called to his councils, from the parliamentary party, Wentworth and Noy. Had their call to the Cabinet truly indicated that the King had determined to conform his ad-



ministration to the wishes of Parliament, the observation of the historian would have been just; but such was not the case. It very soon appeared that the introduction of those leading characters into his council was on account of their secret apostacy from their party, for which their old friends never forgave them, and which doubtless kindled to a greater heat the zeal of the Commons in the impeachment of Wentworth, after he had been made Earl of Strafford. The deep resentment ever after entertained against Strafford and Noy by their former associates, is manifested in this extract from a speech of Lord George Digby, afterwards Earl of Bristol, on the Triennial Bill: "Let me appeal," said he, "to those who were present in this House at the agitation of the Petition of Right; and let them tell themselves truly, of whose promotion to the management of affairs do they think the generality would, at that time, have had better hopes, than of Mr. Noy and Sir Thomas Wentworth; both having been at that time and in that business, as I have heard, most keen and active patriots, and the latter of them, to the eternal aggravation of his infamous treachery to the commonwealth be it spoken, the first mover and insister to have this clause added to the Petition of Right, 'That, for the comfort and safety of his subjects, his Majesty would be pleased to declare his will and pleasure that all his ministers should serve him according to the laws and statutes of the realm.' And yet, Mr. Speaker, to whom now can all the inundations upon our liberties, under pretence of law, and the late shipwreck at once of all our property, be attributed more than to Noy, and all those other mischiefs whereby this monarchy hath been brought almost to the brink of destruction, so much as to that *Grand Apostate* to the Commonwealth, the now Lieutenant of Ireland—(Wentworth.)? The first I hope God has forgiven in the other world; and the latter must not hope to be pardoned in this, till he be despatched to the other. Let every man but consider those men as once they were."

It was with great truth that the court party complained that the cry of "grievances" was employed as a subterfuge and shelter for the new principles sought to be introduced. It was necessary for the friends of the estates to fight under a mask, and this was the one they selected by which to rescue England from the supremacy of the Crown. The history of England, in consequence, during the reign of the Stuarts, is principally occupied with devices on the part of the Crown to raise money without the consent of Parliament, and the strenuous efforts of the Parliament to baffle these efforts and confine the King to such supplies as they might choose to grant. Upon this hinge the controversy turned. If he could procure a sufficient revenue independent of parliamentary supplies, he would find it no difficult matter to keep on foot such a body of troops as would serve to coerce the nation.

Among the expedients resorted to by the Crown, during this troubled period, to raise a revenue independent of parliamentary grant, one deserves our particular attention, not only because it has been generally overlooked by the popular historians of this era, but because of its intimate connection with important events in American history and an interesting question in our own constitutional law. For a long time the Crown was supposed to be the main bond of union between the American Colonies and the British Empire. It was an undoubted prerogative of the King "to regulate commerce;" as well the commerce of the British Isles as the commerce of the Colonies. As a means of regulation, he claimed the power to impose duties upon trade—a dangerous invasion upon the revenue power of the Parliament. This pretension was hotly contested by the parliamentary party in the reign of James the First. It became a question of judicial investigation. Notwithstanding the opposition of servile judges, it was ultimately determined adversely to the regal claim. Had the King been able to substantiate in its full breadth this pretension, there would have resulted that dangerous union of the purse and sword which the advocates of constitutional liberty were at such pains to prevent. The Crown also attempted to raise a revenue by the same means and under the same pretexts on colonial trade; but as in the preceding case was defeated. The determination was, that the royal prerogative to regulate commerce did not authorize the imposition of duties, but that the true intent and meaning of the language was to empower the King to interdict, either from the colonial or the home ports, particular branches of foreign commerce, or the commerce of particular foreign nations.\*

The grand object, for which the heads of the popular party strove, could be effected by a very simple alteration in the machinery of government, leaving, in all other respects, the royal office untouched. Among the King's unquestioned prerogatives was the power to appoint his ministers, except through whom he could not perform his regal functions. Parliament, except by impeachment, could exert no influence over their official conduct, and impeachment was a very different sort of responsibility from that at which they aimed—a systematic supervision over all administrative acts. To effect this a direct responsibility to Parliament was to be established. •

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\* This was the ascertained meaning of those words when they were introduced into the Constitution of the United States; which Hamilton, in the *Federalist*, broadly admits. When the Confederate Congress comes to exercise the power to regulate commerce, the interpretation of this language will become an interesting question. Ancient records will then be searched with particularity. See *Hullam's Constitutional History*, and legal decisions there referred to; also *Edwards' West Indies*.

Accordingly, after the withdrawal, or flight of Charles I. from his capital, the Houses sent him, digested into articles, the terms on which they would agree to a restoration of the royal authority and pacification. Those demands were: that he should surrender not only all usurped powers, but also some of which the throne had ever been in undisputed possession. "No minister must be appointed, no peer created, without the consent of the Houses. Above all, the sovereign must resign the supreme military authority, which from time beyond all memory had appertained to the regal office."

But the King chose, rather than submit to terms so ignominious, to try the appeal to battle. He said, should he sign these conditions he would lose all true, all real power, and be "but the outside, but the picture, but the sign of a king." Yet that state of vassalage was in store for the crown; but the consummation was not yet, nor until the Scottish line had ceased to occupy the throne of England.

Upon this part of English history Lord Macaulay observes: "The change which the Houses proposed to make in our institutions, though it seems exorbitant, when distinctly set forth and digested into articles of capitulation, really amounts to little more than the change which, in the next generation, was effected by the Revolution. It is true that, at the Revolution, the sovereign was not deprived by law of the power of naming his ministers; but it is equally true that, since the Revolution, no ministry has been able to remain in office six months in opposition to the sense of the House of Commons. It is true that the sovereign still possesses the power of creating peers, and the more important power of the sword; but it is equally true that in the exercise of these powers the sovereign has, ever since the Revolution, been guided by advisers who possess the confidence of the representatives of the nation. In fact, the leaders of the Roundhead party in 1642, and the statesmen who, about a half a century later, effected the Revolution, had exactly the same object in view. That object was to terminate the contest between the Crown and Parliament by giving to the Parliament the supreme control over the executive administration. The statesmen of the Revolution effected this indirectly by changing the dynasty. The Roundheads of 1642, being unable to change the dynasty, were compelled to take a direct course to their end."

## LETTER IX.

This imperfect retrospect has at least instructed us in the extreme instability of the class of mixed governments. In Great Britain, where alone it has had the appearance of success, we have ascertained that the old collision of parts ensued, and that the result has been the supreme ascendancy of one of those feudal orders. The difference consists in the use that has been made of victory. Elsewhere the victory was employed by the triumphant party in the extirpation of opponents and rivals, but in England the victor was content with a constitutional superiority, the others being allowed to retain their constitutional existence, and even their rank and the symbols of power. To this moderation in triumph is the existence of the English Constitution, as we know it, now referable.

Nor is the continued participation of the House of Peers in the legislation of the empire a contradiction to what has been just affirmed. It is rather a confirmation of its truth. The vital energies of the British system reside in the lower House of Parliament. With the approbation of the Lords they exercise the sovereign powers of legislation, and through a ministry responsible to them, and who hold their seats during their good pleasure, they control the administration. The Peers sometimes venture to dissent from the Commons, but in respect to all questions which rouse and divide the nation, they have always receded. But another principle must be considered before it can be explained why the House of Nobles in England, amid all mutations, was not deprived of its existence, but was continued in the discharge of its constitutional functions.

In the silent lapse of years the privileged orders have long since lost many of the distinctive traits of an Aristocracy, indeed all those traits which render such an order hateful to the people. The House of Lords has been undergoing a process of assimilation to the House of Commons through a long period of time, and it is in this homogeneity that we must find the explanation of the concord which reigns between them, and their harmonious co-operation. The old Baronial, Anglo-Norman nobility almost wholly perished in the war of the Roses, and a race with stronger English, if you choose, Plebeian affinities, succeeded them. Fresh blood, too, has been infused, by new patents of nobility, into the old stock. You have observed in the civil distractions to which England has been subjected, the strong popular or

national sympathies that the privileged class has in more modern times exhibited. It has been no unfrequent occurrence that popular leaders have been furnished by that class.

But whilst the nobility have laid aside their repulsive aristocratic features, the House of Commons continued to rise in respectability and importance, rendering an approximation to a common standard more rapid and easy. Almost as much old blood and long entailed property is found now in the lower as in the upper House of Parliament. Indeed the former, so far from representing the democratic element of the British nation, is one of the most aristocratic of assemblies. It represents the religion, the character, the talent and the great mass of the wealth of the nation; and if radicalism has ever been able to raise its shrill voice on that floor, it has never been able to disturb for a moment the equilibrium of the House. The Commons had indeed an humble original! But they soon ceased to be silent deputies, abashed in the presence of royalty, and became a powerful and influential political body. Do not credit, then, the strange assertion that in Great Britain Nature has consented to suspend or modify her decrees, and that there alone Democracy has agreed to lie down in loving peace by the side of Aristocracy, nay, not only to tolerate its existence, but to give it the fraternal kiss and carry with it a divided sceptre. So far is it from being true that the Commons are antagonistic in principle to the Lords, that they constitute at this hour the strongest outwork of the Peers, and indeed stand between the noble class and the aggressive element of democracy.\*

If we come to the Western Continent, we will discover that the mixed government found a place in the political establishments which England gave to her North American Colonies. There were the royal governors, the council and the popular assemblies, called in our own Virginia the House of Burgesses. These colonial governments resembled very closely the Gothic constitution in its original form, or rather after the

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\* The following passage from Lamartine's *Hist. of the Girondists* confirms, in very striking and elegant language, what is asserted in the text:

"The House of Commons more resembled a senate of nobles than a democratic forum; but this parliament was an open and resounding chamber, where they discussed openly in the face of the throne, as in the face of all Europe, the most comprehensive measures of the government. Royalty, honored in form, whilst in fact it is excluded and powerless, merely presides over these debates, and adds order to victory; it was in reality nothing more than a perpetual consulate of this Britannic Senate. The voices of the leading orators, who contested the rule of the nation, echoed thence, through and out of Europe. Liberty finds its level in the social world, like the waves in the common bed of the ocean. One nation is not free with impunity—one nation is not in bondage with impunity—all finally compares and equalizes itself."—vol. i. p. 184.

Third Estate had been admitted to its share in political power. Indeed they were but shoots from the English stock before it had cast off its old character.

How has the mixed government of the United States fared since it has passed into its new, its military phase? If I mistake not, since the executive or monarchical principle in that government has come to be strengthened with a commanding military force, it has manifested despotic instincts which no one can misunderstand or deny. It has not yet dispersed the federal parliament; it is not necessary, for that body troops very obediently at the President's heels; but it has attacked the freedom of the elective franchise, and with the bayonet crushed opposition where alone it could originate.

If the executive power is not made to bow the neck to legislative dictation, by force or guile it seeks ascendancy and finally monopolizes the government. This is the philosophy of all history, which is but the philosophy of human nature. If in our young government it has not yet displayed its controlling instincts, and found occasion, amid the turbulence of a revolution, for self-aggrandizement, we have reason to be grateful to the integrity of *one man*.

## LETTER X.

But if the Government of 1787 bears but little analogy to that of Great Britain since the Revolution of 1688, I am persuaded that if we uncover the Articles of Confederation from the dust and oblivion which have settled upon them, such a similitude, in some principal features, can there be detected. It has forcibly occurred to me, that the Congress of the Confederation was shaped, as far as circumstances would allow, after the House of Commons. We find there a body to which was committed the general powers of government, and with authority to establish and regulate an executive organ. Out of that arrangement, had it been permitted to stand, there would assuredly have grown up such a ministerial executive as we now see so admirably at work across the Atlantic.

The Constitution of the Confederation provided; that Congress should have "authority to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of President more than one year in any term of three years." Their premier or head of the executive administration was to be called a President, from whence was borrowed the name of the monarchical officer who was constituted the executive under the Constitution of Philadelphia. You will perceive here the germ of such an executive as a parliamentary government demands.

The "Committee of the States" which Congress had permission to establish, and which, upon experiment, went to pieces, has been confounded with the executive organization by a no less authoritative writer than Mr. Jefferson. But the design of that committee appears to have been very different. It was to sit during the recess of Congress, and was empowered to wield the legislative authority of Congress, with certain exceptions. It was a clumsy contrivance, and the best apology for it is, that its establishment was permissive, not mandatory.

The Government of the Confederation, on account of a defect of power, did not go into successful operation, and the executive organization, as provided for, having had no full and fair trial, of course fell with it, thus by the defect and failure of the other departments losing its own hold upon popular favor.

But the great difficulty, I apprehend, to be encountered in introducing a responsible executive into an amended constitution, will not be found

in convincing the sober-minded and thinking portion of our people of its infinite superiority, but in the innovation it will make upon their political habits, which, for so long a time, have been adjusted to a monarchical executive. I fear it will prove no easy task to cut them loose and fasten them to another of a parliamentary or republican nature. But a great war raging in every part of a country, produces or may produce a moral revolution, of which the advocates of this change may take advantage. The fetters of many, an obstinate prejudice will be broken, public opinion will be unchained, and once again in America will thought be set free. I despair of no wholesome reform that is patronized by the the active genius of the army.

But there is another army, an army of small, mercenary politicians, brought into existence by presidential elections, whose opposition is much to be dreaded. Will they be reconciled to retire into their native obscurity? They may be found as little inclined to relinquish the dear privilege of choosing a President, as ever were the debauched Prætorians a Roman Emperor. Can this powerful array be broken?

Eminent men in Virginia, and elsewhere in the Southern section, have often expressed apprehensions of the effects of the Presidential elections in drawing after them venality and corruption in their most insinuating and dangerous forms. Indeed, many have thought this the most fatal of all the innovations introduced into the Federal system in 1787. Into every part of the body politic the subtle venom was instilled. By these elections was first introduced the supreme reign of Party, whose Procrustean tests soon came to be applied everywhere to every officer, from the greatest to the least; and what increased the evil, the influence of this periodical election of the highest officer finally brought under the jurisdiction of popular election every public office in the country. When this had been effected, not a justice of the peace, not a sheriff, not a constable, not an overseer of the poor could be selected by the voters until after a previous inquisition into his politics, or rather as to what badge the man wore, to which one he belonged of the two great camps which divided society.

This spirit of party in its potency, more than all other causes, had concentrated power at Washington. It had raised over us not a physical despotism, but such an one as the Prince of Evil is said to erect in the hearts of bad men. So deep-rooted was this despotism, that nothing less powerful than the convulsive efforts of the present revolution could have destroyed its baleful influence. But why transplant the Upas tree to the South?

The effects of this monster evil, however, did not stop here. It became a common observation, that party spirit had already to a considerable extent wrought a change in the character of our people, as Mr.



Giles in 1829 predicted it would. The opinions of the leading men in the country had begun to lose their hold on the people, and had been supplanted by party meetings, wielded by an irresponsible newspaper press. Indeed, men of the best parts and character were beginning to retire from public life, and to be replaced by a lower caste more compliant in their natures. The lion would soon have altogether disappeared from our land, and the jackal and fox have taken his place.

This change had already come about in the Presidential line. See into what a pigmy race it had run! Compare General Harrison to Mr. Madison with his massive intellect, and Franklin Pierce to the accomplished Jefferson, and, if the indignity be not too great, compare Mr. Lincoln with Washington. Under such auspices the government had got to be an elective monarchy, and the President, as Jefferson when he first read the Constitution had stigmatized him, *a bad edition of a Polish King*.

Our experience of an elective executive has convinced us of its entire incompatibility with stability in government. It had been foreseen that the Constitution of the United States would be overwhelmed in one of those periodical tempests which that Constitution had itself decreed should sweep over the country. No government can be made strong enough to endure so violent a test. The true principle would seem to be, *either that the executive authority, in order to afford the necessary permanence, must be fixed and hereditary; or its depository should be subject to be changed with the greatest ease possible, and without suspending or destroying for a moment the movement of the machinery of government.*

A little republic like that of San Marino, perched on the Alps, where there is nothing to be struggled for, might endure the elective principle even when applied, as we have applied it, to every part of the government, as though instability were the object of search; but for a great people to adopt it, is to legislate for revolution and make anarchy their normal condition. Republics have their enthusiastic friends, hereditary constitutional monarchy its advocates, and despotism its apologists and defenders; but no one is ever found to recommend or extenuate elective monarchy—all are opposed to that.

An elective executive in our Confederate Government will be productive of revolutionary changes, which produce war; and we do not now stand in need of theoretical instruction as to the nature and extent of that calamity.

We have to choose either a permanent executive, such a one as only hereditary right will afford, or an executive which may be changed without unchaining the storm and convulsing the nation—such an executive, in short, as fits to a parliamentary government. A ship without

anchor, rudder or compass is not more afloat and at the mercy of the winds and waves than an associated government such as ours is, where there is nothing that savors of stability—no part that is not in a state of constant transition. I have heard an hereditary executive warmly defended in the army as necessary to prevent periodical revolutions, but I confess that my attachment to the republican executive is unabated, and that I would never consent to resort to the principle of hereditary right, except to escape from that greatest calamity of nations—an elective monarchy.

The executive line under the Constitution of the United States has, as we have seen, degenerated into a race of mountebanks and dwarfs. But what will be the effect of the change here proposed upon the intellectual stature of our public men? For we all agree that any plan of government is vicious and doomed soon to perish, which does not tend to develop and to employ in the public service the highest character and talent of the nation.

A parliamentary government, in holding out the first offices of the executive administration as the reward of successful ambition, applies to human exertion the most potent stimulants. Those prizes would be won by the exhibition, on the conspicuous theatre of the Confederate House of Commons, of a superior capacity for public business—of sagacity, wisdom, knowledge of affairs, eloquence and firmness of character, not by the successful employment of the low pimping arts of popularity. No party or interest in the country could maintain itself in the lead for an hour that did not put forward its ablest men, not only in one, but in every avenue of the government. Thrown into the family of nations, the public emergency would demand able diplomacy. In due season a corps of accomplished ambassadors and negotiators would be formed. It would become a distinct profession, and emulation there, as it does in all things else, would after a while produce the highest merit. By this means, our country, after such a system had reared its own children, would be as celebrated for its statesmen and orators as any nation in Christendom.

Indeed, all the intellectual energies of a country ought to be placed at the disposal of the Administration. No people in this enlightened age can hope to attain prosperity and greatness, nor ultimately even preserve national life, who do not patronize genius. The monarchs of Continental Europe have all learned this. Every great European power, including even Russia, backed by its immense military resources, employs a body of expert and able diplomatists, into which are admitted, as occasion demands, the gifted minds of the army, who in this way are engaged in embassies and negotiations, as well as battles, sieges and military reviews. Those sapient States would as soon bury their

shining ingots in the earth as condemn a great mind to rest in the inglorious repose of the barrack room. In America only is such folly committed. There only do we find a nation that has been penurious of its genius and prodigal of its mediocrity. But the Confederate States will be compelled to break through the trammels of this American habit, and cease, after our national existence is fairly begun, to condemn such large capacities as those of General Lee, General Johnston, General Beauregard and General Early to the dull and unprofitable routine of army life, wasting like great lights burning in solitude, or like desert springs, whose crystal waters are swallowed up in the sands. Such liberal employments, thrown open to the ambition and talents of the army, would widen its sphere of action and elevate its intellectual character, whilst they would mitigate, if they could not destroy, that egotistical, monkish spirit, so apt to grow up and fasten on such establishments.

The United States, in possession of immense physical resources, and favored by a position of geographical isolation, could with safety indulge a plebeian preference for mediocrity. But in this respect we shall be compelled to resort to an opposite policy. The United States led with success the existence of "a sceptred hermit," but the Confederate States will have to plunge in affairs and maintain herself as much by intelligence as by force of arms. Our country will be girdled by powerful, and, some of them, hostile neighbors. It was but the other day that a monarchy was planted on our Southern border, where we have heretofore looked only for weakness, a monarchy strengthened by European affinities and connexions, and European allies if necessary. As soon as that modern throne has had time to root itself and mould into harmony the jarring elements around it, Mexico will begin to obey the instincts of all nations and extend its frontiers. With either hand resting on one of the great oceans, and energized by a military monarchy, that country must soon become a formidable power. When to these we add the nations of South America, if confined alone to the management of American affairs, American statesmanship will be no holiday employment.

But, sir, if so inclined, the Confederacy will not be able to stand aloof from European complications. They will press upon her and interweave with her affairs. So closely have America and Europe been drawn together by commercial ties, that the former must finally be embraced by the European Balance of Power; for already, we know, the United States has been invited to send deputies on a recent occasion to a Congress of European powers.

If to escape being drawn into the maelstrom of European politics—since we have been taught so to regard it—we form with the other

nations of this Western Hemisphere an American Balance of Power, may not the two systems be brought into conflict? Whatever be our future in this regard, if our popular form is not so devised as spontaneously to bring into the public service the best intellect of the nation, it must sink and give place to a government that will or can comply with the conditions of national life. To this inexorable law all nations in all-times must bow.

What, in this respect, have been the effects produced on the public councils of Great Britain by the introduction of the principle of parliamentary government? The first fruits of the Revolution of 1688, which is the era of the commencement of parliamentary government, were internal concord and consideration abroad. From that time must be dated the period when the imperial greatness of that country began. England then escaped from the ignominy of a French vassalage, and rose soon to become the arbiter of Europe. Breaking through its ancient bounds, her dominion began to spread into every quarter of the globe, and now, though widely separated, the members of the empire are yet firmly knit together in a solid fabric of power, which the greatest wars, waged by the most powerful nations, have not been able to shake. There was nothing to compare with it in the ancient world, and there is nothing like it in the modern world; nor has that greatness yet attained its period of culmination. To become acquainted with the immense influence of the British Government, it is necessary to be brought into contact with it on the theatre of Europe itself.\* It far surpasses that of any State on the continent.

It was British genius which planned, and British power and valor, aided by her *subsidized* allies, effected the destruction of the terrible throne of Napoleon; and now it is her physical and moral weight which sustains and preserves the balance of Europe.

By undervaluing or denying, we cannot diminish the power of a great nation. In a wiser and more liberal spirit let us examine the cause, and profit, if we are able, by the example. The philosophy of that history is indeed instructive. It teaches mankind that those summits of grandeur have been attained indeed by the practice of many virtues, but mainly by the exquisite adaptation to national character of political institutions, and of those institutions to the greatest national emergencies. After a long period of internal strife, which inflicted on the nation the greatest calamities, the British Constitution emerged, as we have seen, in outward form the same, but its interior structure so modified as always to throw into the public employment men of the

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\* I heard the late Mr. Yancey, that lamented and extraordinary genius, express that opinion after his return from England.

highest character and greatest parts. This is the life-spring of that great body, the pulse whose vigorous beat is felt in every part of the world.

The greatest authority in English politics thus expresses himself, in regard to the effects produced upon the importance of that kingdom by the political revolution which dismissed the Stuarts from the family of princes: "Instead of lying as dead, in a sort of trance, or exposed as some others, in an epileptic fit, to the pity or derision of the world, for her wild, ridiculous, convulsive movements, impotent to every purpose but that of dashing out her brains against the pavement, Great Britain rose above the standard even of her former self. An era of more improved domestic prosperity then commenced, and still continues, not only unimpaired, but growing, under the wasting hand of time. All the energies of the country were awakened. England never preserved a firmer countenance, or a more vigorous arm, to all her enemies and to all her rivals. Europe under her respired and revived. Everywhere she appeared as the protector, the asserter, or the avenger of liberty. A war was made and supported against fortune itself. The treaty of Ryswick, which first limited the power of France, was soon after made: the grand alliance very shortly followed, which shook to the foundations the dreadful power which menaced the independence of mankind. The States of Europe lay happy under the shade of a great and free monarchy, which knew how to be great without endangering its own peace at home, or the external or internal peace of any of its neighbors."

If an Englishman feels conscious of abilities which entitle him to take a leading part in the government of his country, he obtains a seat in Parliament, and if he has within him enough of the orator, which all great men have, to impress himself on the House of Commons, the supreme direction of affairs is within his grasp, and even a Peerage, if he will condescend to accept one. The consequence has been, that in high intellectual and moral traits, the long line of cabinet ministers since the Revolution will compare favorably with the great men of any age or country. To attain these high positions and thus direct that Government which controls a dominion on which the sun never sets, and at the same time to secure within easy reach riches and eminent social distinction, may well excite the ambition of men of the most brilliant and solid understanding. These great rewards are no longer to be obtained by intrigue or courtly arts, nor by the sycophancy of demagogues, but are won by means analagous to such as enabled a Chandos or a Du Gueselin to carry off the guerdon of knighthood.

Run your eye along the period which separates the accession of the House of Orange to the throne of England from the commencement of

modern history, and survey the varying characters of the crown ministers! Under some reigns you find able and upright ministers, but under others the most contemptible of mankind. All depended upon the personal character of the sovereign.\* But even where great men were called to fill those high positions, they were compelled to use continually the compliances and the arts of the courtier, so derogatory to the natural elevation of a great character. The masculine understanding of Elizabeth, and her true sovereign nature, but as much the imminent perils which surrounded her throne and her life, induced her to call around her men of the weightiest talents—Burleigh, Walsingham,

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\* The accident of a popular election, as was exhibited under our old government, is as little likely to give a good man as the accident of birth.

One of the grievances of which the French nation complained when the States-General met in 1789, was the fluctuations in the government from reign to reign on account of the different characters of the sovereigns who had filled the throne. They aspired to that fixed, unvarying policy in the administration, which can result only from a ministry responsible to a steady, enlightened body of legislators. I extract from a speech of Lally-Tollendal in the chamber of nobility: "Lastly, you have no general, positive, written law, no diploma at once royal and national, no great charter, upon which rests a fixed and invariable order, from which each learns how much of his liberty and property he ought to sacrifice in order to preserve the rest, which insures all rights, which defines all powers. On the contrary, the system of your government has varied from reign to reign, frequently from ministry to ministry; *it has depended on the age and character of one man*. In minorities, under a weak prince, the royal authority, which is of importance to the prosperity and dignity of the nation, has been indecently degraded, either by the great, who with one hand shook the throne, and with the other crushed the people, or by bodies which at one time seized with tenacity what at another they had defended with courage. Under haughty princes who were flattered, under virtuous princes who were deluded, this same authority has been carried beyond all bounds. Your secondary, your intermediate powers, as you call them, have not been either better defined or more fixed. Sometimes the Parliaments have laid it down as a principle that they could not interfere in affairs of State; at others they have insisted that it was their prerogative to discuss them as representatives of the nation. On the one hand were seen proclamations making known the will of the King, on the other decrees, in which the King's officers forbade, in the King's name, the execution of the King's orders. Among the courts the like discord prevails; they quarrel about their origin, their functions; they mutually launch anathemas at each other by their decrees.

"You have no law which establishes the responsibility of all the ministers of executive power, for you are demanding one; and the creators of those sanguinary commissions, the issuers of those arbitrary orders, the dilapidators of the public exchequer, the violators of the sanctuary of public justice, those who have flattered the passions of another, those who have brought disasters on the nation, have been called to no account—have undergone no punishment."—THIERS' *History of the French Revolution*, vol. i., p. 52.

the Lord Keeper Bacon—but they could not prevent her from indulging her taste or her passion for a favorite like Leicester. Never since the Crown has submitted to the supervisory jurisdiction of the legislature has the kingdom been governed by worthless minions like Buckingham and Somerset.

The British Empire was created and is now preserved by the admirable system which places always great intellect at the head of affairs, and that nation will not be likely soon to exchange this system for another. Ten or twenty years of a Buckingham, perhaps a single administration, would snare the lofty pyramid to the ground.

## LETTER XI.

In the organization of a parliamentary government it would be necessary to derive the legislative body, which is to control executive action, directly from the people, as in the case of the British House of Commons. The heads of department, or executive cabinet, would be composed of the leaders of the respective parties, who would always be in their seats to give such explanations and defence of administrative policy as the emergency might call for. This would impart unity, energy and harmony to the measures of the government. As stability is the foundation of all good things, without which even liberty ceases to be a blessing, it would be necessary, in order the more perfectly to attain it, to add to the machinery of government, or rather to retain, the balance-wheel of a Senate. The British Government is provided with one, for the House of Peers is nothing more than an hereditary Senate, composed, as we have seen, of the same general elements as the House of Commons; and we know that the Senate of the United States, more perfectly than any other part of that government, answered the end of its institution. It was, indeed, the stronghold in which conservatism, justice and weight of talent and character for a long time took refuge. But the senatorial term was too short, and consequently the Senate after a while yielded to the sectional influence that overthrew the Government.

I have been much struck with the opinion of the elder Adams, which Mr. Jefferson reports, that "no republic could ever last which had not a Senate deeply and strongly rooted; strong enough to bear up against all popular storms and passions. That as to trusting to a popular assembly for the preservation of our liberties, it was the merest chimaera possible."

To make the Senate stable and give it a deep root, its term of office ought to be something approaching the ordinary term of human life; and to enable it to maintain itself, Senators ought to be eligible to the high executive offices, as they are in Great Britain. In this way another and very high class of ability would be laid open for employment by the administrative department.

The House of Commons is a very numerous body, enough so to be a miniature resemblance of the nation. This is one of the reasons why it carries with its deliberations so great an influence. Our House of Commons, like its archetype, ought to be composed of many members. The ordinary current of business would then be rapidly dispatched by a



few active minds. But when questions of moment were up the whole body of the House would be consulted. A multitudinous representative body in reality gets on faster in business than small ones, which are fatigued by the dissertations of impertinence and mediocrity, while the larger body soon devises means to protect itself from such inflictions.

The weight and respectability of the Senate will be proportionably enhanced by that of the State Legislatures from which it will be derived. If their old functions are restored and they be made again influential bodies such as the Virginia Legislature was when it was the Government of the State, it will be a great step towards that representative system which, in the opinion of a large number, is the only means that will enable us to retain a popular government for any length of time.

We have had in Virginia two distinct plans of State Government since her separation from the British Crown, patronized respectively by the eminent names of George Mason and Thomas Jefferson. We have tried both and are qualified to pronounce between them. The first, Mr. Mason's, was eminently based on the representative principle. According to that plan the people were called upon to set in motion the machinery of government by electing a legislature, and upon that body were devolved the responsible duties of legislation and the appointment of all the officers, judicial and executive. The people then, after the first initiatory act, stood aloof in a state of political repose, to enjoy the fruits of a good system, but ready to redress any grievances and correct any irregularities which might occur in the administration of affairs. There could not be oppression, for they held in their hands the sovereign corrective of the ballot-box. Under that system everything went on smoothly. Good order, high morality, veneration for authority, and as great a proportion of public prosperity as the Federal Government would allow, united with a deep and energetic love of liberty, characterized the Commonwealth. There was not a better governed country in the world than Virginia during the entire period to which I allude.

But men grew tired of their own happiness and disgusted with the public felicity, and Mr. Mason's representative government was laid aside and Mr. Jefferson's democratic model tried instead. The Legislature, once so powerful and respectable, was despoiled of some of its most important functions. That body had once chosen a governor and the judges, and provided for the appointment of the retinue of officers employed in the administration of justice and the collection of the revenue, but now the people were called upon to fill all these offices by popular election; not because the former mode of effecting that object did not answer well, but for another and what was esteemed a far better reason; it did not quadrate so well with the *democratic theory*, which required .

that the people should be invoked to discharge every function in the government which it was not physically impossible for them to discharge. Thus it was that the substance was sacrificed to the shadow, and a good political system to the speculations of a philosopher. There occurred then a radical change in the institutions of Virginia. Laying aside their old judicial character, the people were employed to a great extent to displace the representative principle. The priest was thrust aside and the multitude called in to minister before the altar. From that time was annihilated in the public mind that reverential opinion for the Constitution which at last is the only stronghold of a republic. Hence Lysurgus feigned his laws to have been delivered to him by a god, and we may almost consider a subject for regret the passing away of a superstition which taught the body of society to venerate their supreme law.

Mr. Jefferson had seen the model of his plan in Massachusetts. He was charmed with it. After he had retired from the fretful scenes of politics, he employed a portion of his leisure and tranquillity in elaborating into a system the plan of a State government which we now have. According to the most respectable testimony, that plan of dividing a State into a number of petty republics, or parishes, does not answer well. The people are disgusted with the multiplicity of elections. They attend to their own business. They leave it to others to attend to the elections. In the meantime the productive laborers of the community are diminished by the number of official aspirants, the laws are badly executed, and so perish the fond hopes of the Massachusetts experiment in Virginia.

Let that New England importation be abandoned. It suits not the genius of Virginia. Let us, in the ripeness of our own experience, return to the old, the tested wisdom of George Mason, and in doing so illustrate our fitness for the grave responsibility of self-government.

To the ancients we owe, perhaps to Cicero,\* the classification of governments in three primary varieties, the democratic, the aristocratic and the monarchical, to which they added a fourth, compounded of the others, which they denominated the mixed or compound government. To this enumeration may, I think, with propriety be added another, as distinct, when its principle is considered, from all the rest, as they from each other—I mean the representative government, the gift of the Feudal system to the modern world. The representative government has been generally confounded with simple democracy and put in the classification with it, by theoretical writers; and has been confounded too with those local agencies which, under the false name of representation, democracy often establishes, in the executive and legislative offices,

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\* See his Republic.

at the seat of government. But no greater error could surely have been committed!

A term of service long enough to insure representative independence, is the characteristic of this government—the enlightened and instructed one, thinking and acting for the uninstructed and unenlightened many. The one must be so firmly seated, as to be able to withstand clamors from without, originating in misconception and those gusts of passion to which all large bodies of men are exposed. The representative must indeed be responsible to the constituent body, but responsible after his political action has had time to display itself in results; for here, as in divine things, ought the tree to be known by its fruit. Representation, in its true character, is a noble trust and confidence, and engenders one of the most exalted relations that can exist among men. Let it not be degraded into the mercenary bond of client and attorney, or principal and agent, or that other ignoble connexion of master and servant. It has no analogies. It stands apart, a moral tie, like unto itself.

Representative government, then, when we search into and divine its characteristic principle, is as distinct from democracy, in any of its phases and compounds, as intellect and moral stability are from ignorance, brutality and inconstancy.\*

The evil to be guarded against in popular systems, (we have learned this from experience,) is not irresponsibility, but evils of a contrary nature—servility, the hunting after popularity, to which the highest functions of office are sometimes prostituted. It is the nature of man to flatter wherever there is power, and flattery, as has been wisely said, corrupts both the giver and receiver; nor is adulation better for the people than for kings.

The constitutional disease of elective systems, is a servile submission

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\* The true attitude for the people to assume is that of judges, and not parties, to political action. Here is the broad and visible line between Representative government, according to the theory of George Mason, and your Jeffersonian Democracy. The following memorandum of a conversation between Sir James Mackintosh and Edmund Burke, which for the first time I have just met with, gives expression to the immutable principle to which allusion is made in the text: “*Condemned democracy as the most monstrous of all governments, because it is impossible at once to act and to control, and, consequently, the sovereign power, in such a constitution, must be left without any check whatever; regarded that form of government as the best which placed the efficient sovereignty in the hands of the natural aristocracy of a country, subjecting them, in its exercise, to the control of the people.*”

We can be at no loss to understand that Mr. Burke means here, the intellect and virtue as the *natural* aristocracy of a country, by whom, subject to the control of the people, the government ought to be conducted. Who is there so lost to reason, as to controvert this sapient conclusion?

to what is thought to be the opinion at home. To that, the most necessary measures of state policy are sacrificed, and concessions made, worse than any sacrifice.

The House of Commons, the illustrious model that invites our imitation, has a representative period of seven years. It has, from the beginning, been so, and complaint has never been made, that by it the representative is removed to too great a distance from the constituent. On the contrary, English writers have expressed the opinion, that, by the multiplication of newspapers which now spread daily before the public the debates and proceedings of Parliament, and their rapid dispersion through the country by an elaborate system of railways, thus inviting the constant and particular supervision of the voters, the robust spirit of representative independence has to some extent been lost. To that cause ought to be added another, more powerful here than there, the authority of public opinion, which, if it stood as the sole guarantee, acting through a free press, would be enough to compel members to consult the public good.

We have in the mixed character of our population and the federal divisions of our country, materials out of which, by the aid of our long and dear-bought experience, we may be able to construct a permanent Confederated Republic—combining in large proportions the prominent virtues of the British system, so rarely found together—stability and liberty. But, whatever others may conclude, I am myself unalterably convinced, that if we would succeed in this final attempt to establish upon a permanent basis free institutions, and be saved from a despotism, our political system, in all its parts, must be purged of democracy; not only in the Confederate Government, which is but the consequence, or the rivulet, so to speak, but in the State systems, the causes and fountains. You cannot, sir, have anarchy and weakness in the parts, yet vigor and order in the whole. The spirit of unity must pervade and animate the entire system, composed of the State and Confederate Governments. Homogeneity, whatever philosophers say to the contrary, would appear to be the grand primordial law of the political world. The spirit of State institutions will breathe into the lifeless form of your Confederate Constitution. The States are the pillars of the Confederacy, nay, they are the ground and basis of the whole fabric. The lofty tree, (if I may borrow a metaphor from Bolingbroke,) which shoots its branches into the sky, partakes still of the soil from which it springs, into which it roots, and by which it is sustained.

The Constitution of the United States proclaimed the necessity of such assimilation. But a real assimilation there, not a simulated and feigned resemblance, was plainly impossible, and the States were permitted to pull down their republics and establish democracies. Who can

marvel, that the Federal structure, after its very foundations were loosened, should have tumbled to the ground?

Some wise man has said, that national character at first determines the political institutions of a country, but that afterwards the political institutions shape the national character. If our people are indeed republican in character, and not a democracy, there will be no serious difficulty, if the right men take hold of it, of laying the foundation of our entire system in the representative republican principle. The reaction of the government will elevate the national character, which, with the mixture of the military virtue, will form a great and homogeneous people.

Mr. Webster, in one of his public speeches, attributed the mobocratic tendency of politics in the cities, and indeed the entire North, to the silent withdrawal, and standing aloof from the political arena of the wealthy and educated classes. Hence were lost to the conservative forces of the country a great mass of intellect, property and respectability, the influence of which no popular government can safely dispense with. These advantages are not the fickle gift of fortune, but are bestowed by an all-wise Creator as a great trust, to be used for the benefit of the community or country, not to be wasted in indolent repose and self-gratification. When called into active use, they are the influences which govern society, and by the happy genius of our slave institutions, are dispersed through the villages and country, as well as found in the great towns and cities.

## LETTER XII.

We hear the opinion expressed, more frequently in the army, that the dissolution of the Union, which has overwhelmed the country with troubles, has sealed the fate of free government and proved incontestably the instability and impracticability of republics. For some appear to think that instability and internal war are the wretched condition of republics alone, and that to secure permanency, and, as it were, to chain it to the throne of government, it is only necessary to sacrifice liberty. Whereas, it is the testimony of all history, that instability is the political law of man, and that it nowhere attaches with more certainty than to kingly government, more especially where, with its oppressions and abuses, it is erected over an uncongenial population, such as ours would be. If we look at the vicissitudes of monarchical government in Europe, particularly in France, since our own ephemeral experiment was begun, we will be compelled to acknowledge that if republics are unstable permanency dwells not in monarchy.

The origin of violent and repeated changes in government, other causes concurring, is found in the nature of man. The philosopher Hobbes was much in the right when he said "war is the natural state of man." What are those fierce struggles of interest which kindle the animosities and absorb the souls of individuals but the spirit of war? It is the same bellicose propensity which rouses class against class and nation against nation.

Some contemplate with delight the solidity, the grandeur, the vast extent of the old temple of English freedom, and talk of getting a king as much at their ease as though the king were not the least part of the English system. We have here cast a hasty glance at the history of the British government and noted the gradual and painful process by which it was formed: how class interest is blended with monarchy, and how powerfully the circumstances and physical condition of the country affected the constitution. But there was also a great moral law ever at work—the constancy of the English nation to their own government. They preferred it to all others, and instead of, in an ill-humor, throwing it away for some specious and attractive novelty, they adhered to it with a noble tenacity, and from time to time with cautious diligence repaired its defects. That constitution was unimitated and is inimitable; but if we cannot borrow the pattern of it, we can at least exhibit

towards our own government the same indulgence to its imperfections and perseverance in removing them. But if, despairing of successful imitation, or successful originality, the people long to partake of the continued and manifold blessings of the British system, they will have to revert to the institutions of their ancestors and gain admission into the British union.

But, sir, I see nothing in the dissolution of the Union between the North and South to warrant so broad a conclusion. Its destruction, without doubt, incontestably proves that a Federal Republic, embracing two alienated and hostile sections, is an impracticable government; and, when the history of the quarrel which ended in secession is considered, it proves, too, if you choose, the total unfitness of the North for self-government; but I am at a loss to perceive how the intelligent and manly course of the Southern people, who preferred freedom with the penalty of war, to submission with dishonorable peace, can be supposed to authorize a like censure. On the contrary, this tremendous crisis affords a sublime proof to all ages and all nations, that the South is worthy of that freedom for which she is fighting.

It is idle to talk to Virginia of a government of force. Her every tradition is opposed to it, and we need only look to her proud flag to know what her answer would be to such a proposition. She is fighting against monarchy now, and would not be likely to receive from the South what she had rejected from the North. Great indeed would be the humiliation, and severe the sarcasm on the Revolution of 1776, if whilst republican institutions were growing stronger in the Canadas, under the fostering care of the British Government, we should see them miserably perish here by the suicidal hands of our own people.

Republicanism has been an eminently successful experiment in the South, since negro slavery was first planted on the soil of Virginia by England. And it will continue, it is hoped, to flourish and to strengthen in this congenial atmosphere, as long as, under some name, or form, the negro does the plantation work of the South—provided always we resolutely expel from our governments every infusion of democracy.

At the end of the old Revolution, men talked of monarchy as now they do, but Virginia, with a firm countenance, kept on the even tenor of her way, and Washington, with evident pride, spoke of the strong republican instincts of her people, whilst in the same breath he informs us of the monarchical tendencies of the North. Our destiny in the South is linked with republican government, and it is the part of wisdom, or at least of prudence, to endeavor to devise the best form of a republic.

## LETTER XIII.

Whilst we are engaged in considering the question of constitutional amendment, it may not be devoid of interest, and even instruction, to look back to the times when a separate constitutional government for the American republics was first agitated.\*

With a perseverance extending through a period of ten years; the Colonies resorted to remonstrances and petitions for redress of grievances, the old English method, as we have seen, against that taxation sought to be introduced into the colonial system. After experience had proved those measures to be abortive, they resorted to a commercial non-intercourse, and that failing, resolutely took up arms in defence of their invaded rights. This alternative was not based, in its first conception, on independence of the imperial connexion, but was only an armed resistance to what they conceived to be unconstitutional laws.†

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\* There never existed a race of public characters, who from the rage of novelty and political experiment inflicted on their country such incurable wounds, as did the Southern leaders during the brief period reaching from 1776 to the installation of the Constitution of the United States. Not to mention the generation and birth of that amorphous beast, these innovators destroyed the union which existed between the mother country and their respective colonies without having a definite idea of a substitute for it; for I do not reckon the memorandum, which Dr. Franklin had in his breeches pocket, anything more than a rude sketch of a government for the "United Colonies," to answer the temporary purpose of the armed resistance at first set on foot. They enacted without a shadow of constitutional authority the ordinance of 1787, by which the entire Northwest region was torn from the South and added to the North, after having beguiled Virginia to surrender it to the central government. The professed object was to enable these projectors to try their plan of a Federal Union, Maryland being obstinate in her refusal to ratify the government of the Confederation unless Virginia would agree to curtail her boundaries, Virginia standing at that time as independent of all associated governments as France or Russia. The surrender was procured and the experiment made, and in the great war which its failure has produced, the most dangerous enemies of the ceding power are the communities which were carved out of the surrendered domain. I will not bow the knee to insolent and presumptuous arrogance. The names of those men deserve to be held in eternal reprobation here, and instead of grottoes, statues and temples to their memory, they deserve to be set in the pillory of history.

† "The American revolution is an example of a war begun for one purpose and prosecuted for another."—HENRY CLAY.



They proposed, in short, in the language of a distinguished gentleman of the present day,<sup>†</sup> *to fight in the Union* for their old recognized rights.

But unhappily, as some may think, the object of the armed movement became revolutionary. The terms of conciliation, when proffered by the British Cabinet, though embracing larger concessions than were first demanded by the Colonial leaders, were rejected; nor would they concede even an audience to the royal commissioners. Yet amid the wild tumult there were those who were constant to the first opinion, and with vigor and warmth opposed the new object of the struggle. Many wise and good men were embraced by that party, which had its principal strength in the South, and nothing could be more unjust than to confound them with the vulgar herd of submissionists and tories. Indeed, at one time, after the troubles began, they were in close fellowship with the leading characters of the Revolution. Their motives none impeached, and their reasons may justly claim a moment of our attention, if only as an act of historical justice to a neglected and almost forgotten class of statesmen.

"When those unhappy difficulties began," they said, "they had taken their stand promptly with the Colonies, and had heartily concurred in all the proposed methods of redress, even in the resort to arms; for they had from the first been satisfied that if the unjust pretensions of the British Parliament were submitted to, the Colonies would have both property and liberty destroyed. But they considered also the fate of the British Constitution itself involved, inasmuch as Parliament proposed to lay and collect taxes from the Colonies for the maintenance of a military force, and thus get rid of the restraint of the constituent body on their action. If the power of taxation without representation could be wielded by Parliament, it was clear that there would be an end of liberty everywhere within the extended precincts of the British dominion.

"In taking up arms against that tyrannical abuse, they were sanctioned by the example of their British ancestors, who, sooner than be robbed of constitutional liberty, had on more than one occasion encountered all the perils and hardships of civil war. But in the hour of victory, instead of pursuing the phantom of a republic, those ancestors had sheathed the sword, satisfied with having corrected abuses and restored the constitution to its old principles. That example they proposed to imitate throughout, and to remain banded and in arms, not only for the defence of their old rights, but for a constitutional guaranty, such as a colonial Magna Charta or a Bill of Rights. But these objects secured, they proposed, with the moderation of their ancestors, to lay

down their arms and disperse to their homes.\* Some spoke of independence or submission, but they were not confined to that hard alternative—the middle and the safe path lay still before them.

“There were, they said, thirteen colonies that had united in the policy of armed resistance, the only connection between which was the British throne. If that throne were displaced that bond would be severed, and they would fall asunder and become to each other, as to the rest of mankind, independent States. Some of those States, they said, would be small, too small to maintain independent establishments, whilst others were of a great, an undefined extent. Could they hope to procure from the Creator an exemption from mortal frailty? If not, wars arising from ambition, or avarice, or jarring and misunderstood interests, would assuredly visit those communities. Thus would be introduced into that peaceful brotherhood the dreadful scourge of nations, and the weaker States would submit to the law of the conqueror. All parties, then, great as well as small, might bid adieu to those quiet scenes of liberty and prosperity which they had enjoyed in the shadow of the British throne.

“Nor was their own experience devoid of instruction on this point. The colonies, they said, stretched from the far north to a great distance towards the tropics, embracing great diversities of climate, productions, and national character. So widely dissimilar were the Northern from the Southern colonies, that even then, under the colonial *regime*, they might be considered as two peoples. These differences were as well understood in Europe as in America, for the mediatorial character of the imperial connection had alone restrained the deputies of the North and South from flying at each other, when they had been brought face to face, so violent and hostile were these antagonisms. Here, then, they insisted, in the very bosoms of the two parties, are found the inextinguishable causes of war. †

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\* It appears to have been the determination of the British Whig Party, not only to repeal the offensive laws, but grant constitutional securities. Mr. Burke, in respect to this point, says: “My idea, therefore, without considering whether we yield as a matter of right, or grant as a matter of favor, *is to admit the people of our colonies into an interest in the Constitution*; and by recording that admission in the journals of Parliament, to give them as strong an assurance as the nature of the thing will admit, that we mean forever to adhere to that solemn declaration of systematick indulgence.”

† The mediatorial functions of the British connection are dwelt upon, with his usual force, by Mr. Burke, and he mentions some examples which I have forgotten. The relations of dependence which existed at one period between the republics of Northern Italy and the German Empire afford another example. It was anterior to the time when the ambition and cruelty of Frederick Barbarossa alienated to so great an extent the attachment of those republicans

"So manifest were those dangers, they continued, that it was probable, nay, it was certain, that the leaders of the proposed revolution would try the experiment of a federal union among the thirteen States. But would not that be flying from one danger into another, perhaps into a more fatal danger? A mere league or loose confederacy would not re-place the old tie, answer the ambitious and vaulting expectations of the revolutionary leaders, nor provide for the wants of the country. Besides, history abounded with examples of such expedients, all short-lived, and in their dissolution generally productive of war. To establish a firm, lasting, and at the same time efficient and active union among those parties, would require a government; not a simple government, however, but a complex federal government, armed with sufficient powers, and so skilfully balanced and its interior organism so nicely adjusted, that the government in its operations would bear everywhere with an equal weight, and diffuse its benefits with an impartial hand, and yet be so restrained by constitutional checks, as not to encroach upon the reserved authorities of the States.

"The model of such a government was not to be found in the whole range of ancient and modern history, and without a model they would be compelled to originate one. The nearest approximation, they said, to such a government, was the union which held the British Empire together, from which it was proposed then to withdraw. But there was a difference of principle between the British union and the one with which they proposed to substitute it. The British union rested on an authority external to the Colonies and independent of their action, rendering any collision between the parts impossible. States and populations, most opposed in interest and character, might, side by side, dwell in amity as members of such an association; a truth fully evidenced by the fact, that nations in opposite quarters of the globe, differing in all the main characteristics of nations, such as religion, manners, language, customs, pursuits and origin, were still grouped in most perfect harmony under the ample folds of the British flag, contributing, each through its commerce, to the vigor of the national arm, and receiving from it prosperity and protection. But would there be any disinterested and impartial hands in the contemplated American Union, in which power over the common government could be placed? So far from it, power, of necessity, would have to be committed to some of the

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from the empire. The authority on this point I quote from the learned page of Hallam: "In the earlier stages of the Lombard Republics, their differences, as well mutual as domestic, had been frequently appeased by the mediation of the emperors; and the loss of this salutary influence may be considered as no slight evil attached to that absolute emancipation which Italy attained in the thirteenth century."

parties, the very parties perhaps who might be exposed to an overpowering temptation to abuse it. There would be arrayed against each other on that theatre every conflicting interest of the whole union, the passions, also, and the follies, the local irritations and the antipathies of ill-assorted and divided populations. It must be obvious, that so far from the government of the union being a centre of concord and repose, it would soon become a gladiatorial arena for the embittered strife of hostile factions. They took occasion to observe, that it was that opposition of interest added to the strong antipathies engendered between neighboring communities or different portions of the same community, often by very trifling causes, as much as the feebleness of the human intellect, which led to doubts of the capacity of any people for self-government, and which had induced many nations to demand the impartiality of kings. Indeed, on that ground alone the advocates of hereditary despotism had ever defended it, as on the whole the most excellent government for mankind. Owing to the nature of man, and the differences pervading every large society, there had ever been manifested a strong inclination in such cases to schism. This disposition had already shown itself in many, if not in all of these colonies, and it was the part of prudence rather to disperse and mollify those evils, than to collect and intensify them.

"How long, they enquired, would the North and the South, those hostile sections, be likely to continue united, with the dearest interests of the one disposed of, perhaps sacrificed by the selfish considerations of the other? The small colonies were then perfectly protected by the impartial action of the British union, but what would be their fate in a scuffle of interests with the large States? It would seem to be a self-evident proposition, that among parties of such irreconcilable tempers and quarrelling interests, an attempt to carry on a common government, instead of uniting them in the bonds of brotherhood and peace, would be of all devices the one most likely to engender war. There would be but one hope of escape, and that would be derived from a perfect political and social organization, which they had not had experience enough even to conceive of, much less to make.\*

"A good government is the growth of many ages. It is only when

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\* An impartial exercise of authority is necessary to constitute a good, or even a tolerable government. Numerous have been the devices resorted to by different nations to compass this end. Despotie power is the means which the mass of the human race are compelled to rely on. In popular systems, where there are dividing lines, the principle of an equilibrium or a concurrent majority is generally resorted to. This, *in theory*, is an admirable mode of attaining impartiality in the government, that extremely intricate problem touched upon in the text. Mr. Calhoun has with great ability discussed this subject in his essay

it is produced by the combined action of national character and national circumstances, that a full correspondence between the nation and its political institutions can ever exist. The well nigh insuperable difficulties to be overcome in constructing stable and free institutions must be apparent to every reflecting mind; and yet, upon success in that experiment, all hopes depended. Impressed by the magnitude of such an undertaking, the greatest living authority, if not the greatest authority of any age or nation, had said: "Surely we all know, that the machine of a free constitution is no simple thing, but as intricate and as delicate as it is valuable. A constitution made up of balanced powers must ever be a critical thing." \* To this weighty opinion they might add also the sanction of antiquity as to the extreme difficulty of the undertaking and the time required for its perfection; for Cicero, in his Republic, had declared that it would demand not less than a thousand years.

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on government. But I heard it sagaciously remarked of that work, "that it had convinced the speaker of the impracticability of ever being able to form a stable representative system here, or indeed anywhere else."

In the Lombard Republics, they employed about the end of the twelfth century, a very singular expedient to procure a disinterested public authority. "About the end of the twelfth century, a new and singular species of magistracy was introduced in the Lombard cities. During the tyranny of Frederick I., he had appointed officers of his own, called *podestas*, instead of the elective consuls. It is remarkable, that this memorial of despotic power should not have excited insuperable alarm and disgust in the free republics. But, on the contrary, they almost universally, after the peace of Constance, revived an office which had been abrogated when they first rose in rebellion against Frederick. From the experience, we must presume, of the partiality which their domestic factions carried into the administration of justice, it became a general practice to elect, by the name of *podesta*, a citizen of some neighboring State as their general, their criminal judge, and preserver of the peace. He was invariably a man of noble family, even in those cities which excluded their own nobility from any share in the government. He received a fixed salary, and was compelled to remain in the city after the expiration of his office, for the purpose of answering such charges as might be adduced against his conduct. He could neither marry a native of the city, nor have any relation resident within the district, nor even, so great was their jealousy, eat or drink in the house of any citizen. The authority of these foreign magistrates was not by any means alike in all cities. In some he seems to have superseded the consuls, and commanded the armies in war. In others, as in Milan and Florence, his authority was merely judicial. We find in some of the old annals, the years headed by the names of the *podestas*, as by those of the consuls in the history of Rome."—*Hallam*.

The British procure, at this date, an impartial exercise of the executive authority in the dependencies of the empire, by sending out governor-generals from the British Isles, an indispensable qualification being that the governor-general shall not be a native of the country he is to preside over.

\* Burke's Speech to the Electors of Bristol, November 3d, 1774.

"To originate a government among the thirteen parties, which would replace the British connection, was a great task which demigods or angels might perform, but to which the feeble powers of man were inadequate. The great majority of the people of these colonies had led obscure but contented lives, engaged in the peaceful cultivation of the virgin soil bestowed upon them by a bountiful Creator. They had had no political life outside of their provincial assemblies, and without experience it was absolute madness to plunge into so difficult a business. Experience, indeed, was the only safe guide in the affairs of life, but especially so in this the most difficult of any, and only very rash young men, or very weak old ones, would be apt to undervalue it. For themselves, with such mighty interests at stake as the happiness and prosperity of so many communities, and that of their unborn and innocent posterity, they could not consent to unchain the tempest of revolution and devastate an entire continent. They could not consent to go forward in that business.

"Some of the advocates of the proposed revolution, they said, spoke of independence as a distinct and substantive blessing; but let such remember that when the proposed federation is formed and a third power called into existence, which the central organ would be, that the independence of the several States would be as effectually confiscated as it then was surrendered to the supremacy of the British government—to a greater extent, indeed, for the jurisdiction which the new power would be called on to exercise in and over the several States, would greatly transcend that exercised by the old jurisdiction.

"Until that bright but erring genius, Charles Townsend, introduced the fatal proposition to tax the colonies, America, they said, was loyal and happy, and as soon as those impolitic and wicked measures were abandoned, would be loyal and happy again. To effect a total repeal and abandonment of those obnoxious laws, it was only necessary to persevere in the plan of armed resistance; for that policy to which those laws were referable, was supported by a party in England which would speedily be driven from power. It would be a great error to regard that policy as the fixed intention of the imperial head. On the contrary, a great division of the British people sympathized with the oppressions and distresses of the colonies, and a great and growing parliamentary opposition had been set on foot and was sustained by characters of the greatest weight and talents in the country. The event, they said, if they continued to persevere in the original design, could not be doubtful, when to the justice of their cause they added the influence of those powerful auxiliaries.\* But if that design was abandoned and the steps

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\* That too much influence was not attributed by those holding these views to the party sympathizing with the colonies, is clear from subsequent legislation—

of independence taken, their British allies would all fall away and be converted into enemies, and the colonies would feel then the full weight of the national arm.

"The British Empire, they insisted, of which the American colonies constituted so important a part, was, in truth, a comprehensive union of States encircling the globe, dependent in certain respects on the British Isles, but each provided with a domestic government, under the control of its people, having exclusive jurisdiction of their most important concerns. The principles of that union, as already stated, were such that the States embraced within it, however dissimilar in interest and social character, could never be brought into collision, but must dwell in tranquillity together, members of the same peaceful household; for that great union was founded on the two harmonizing principles of local self-government and commerce, the benefits of which being reciprocal, tended every day to strengthen the connection. In that constellation of States each had a motion of its own, whilst the whole revolved around the British throne as a fixed and central body. But taxation of the members formed no part of the system; it was a dangerous innovation not to be tolerated, and which the home government would be driven to abandon. It was true the colonies had contributed large sums to the imperial treasury, to aid in defraying the expenses incurred in their own protection, but the contributions had always been voluntary, and the taxes laid and collected by their own assemblies. Such contributions were but just, and, no doubt, when the old feeling should be restored and the wealth of the colonies increased, such presents would be resumed when occasion should demand, and even be applied to new and more general objects.

"It was worth, they thought, a civil war to maintain and establish on solid foundations such a system as that, which brought so large a

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adopted though it was when the controversy had passed beyond the reach of such a remedy. By 18 Geo. III., c. 3, § 12, the King and Parliament of Great Britain declare that "from thenceforth they will not impose any duty, tax, &c., payable in any of the King's colonies, provinces and plantations in North America and the West Indies, except for the regulation of commerce, the produce whereof is always to be *applied to the use of the colony in which it is levied.*" See Edwards' West Indies, Book 6, page 347.

During the vexed controversy with her North American colonies about the right of taxation, Great Britain sought to confound the right to lay and collect revenue duties, which the colonies warmly contested, with the duties for the regulation of commerce, which the colonies agreed to be lawful. Dr. Franklin, the American Commissioner to London, with great acuteness, proposed to settle the controversy by government agreeing to turn over the duty when collected "to the use of the colony in which it is levied." Such was the origin of the provision in the Statute of George III.

portion of the earth's surface under the same mild sceptre. The system, resting on local self-government and free commerce as massive pillars, was capable of indefinite expansion, and, if wisdom and moderation prevailed, the sublime spectacle might be presented to mankind of the ambassadors of independent States seeking for their countries admission into the expanding circle of the British union, as the ambassadors of independent States once sought the security and protection enjoyed by the 'Friends and Allies of the Roman People;' or, if in the providence of God, as a punishment for their ingratitude for its signal favors, that movement for independence was destined to prevail, mankind might witness the instructive event of some or all of these erring daughters seeking again the parental roof to lay their weary heads once more in the bosom of England.

"They admitted, however, in conclusion, that the bonds of the British union could not last forever, and that that state of wardship, if any chose to consider it as such, would in the flight of ages come to an end; but this was no just reason for premature action. A season of maturity must come for nations as well as for individuals, and when that should arrive these colonies, or rather these affiliated States, would drop from the parent tree; but it was their duty to wait for that period of full development. The time for separation and the commencement of national life, would, come when it might, be a critical one for the colonies; but if they would wait for the gradual process of nature, with the danger would come the means of escape; for political institutions and political demarcations, along with political habits, would have been formed, qualifying the American States, as one, or several nations, to take an independent position in the world."\*

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\* "America had, except the commercial restraint, every characteristic mark of a free people in all her internal concerns. She had the image of the British Constitution. She had the substance. She was taxed by her own representatives. She chose most of her own magistrates. She paid them all. She had in effect the sole disposal of her own internal government. The whole state of commercial servitude and civil liberty, taken together, is certainly not perfect freedom; but comparing it with the ordinary circumstances of human nature, it was an happy and liberal condition."—*Burke's Speeches*.

That sole restraint here spoken of by Burke, the royal commissioners were authorized to abolish, if, without it, the Americans could not be brought to an amicable adjustment. But Lord North, under whose administration the concession was proffered, considered that these trade laws were of little influence in securing to Great Britain the commerce of America, which was enjoyed by England as the natural and irresistible advantage of a commercial preference.

The colonies of England enjoy as great a liberty almost as the people of the British Isles. But very striking is the difference with the colonies of France. Each nation has transported to its colonies its own political principle. The English colonies, under the encouragements of freedom, have ever thriven, whereas



those of France have often languished. Canada presents a very conclusive example. It had been a French colony from its first settlement, and under the able administration of Chatham was conquered by the British arms. Under the French monarchical system, public prosperity was not known and corruption and mismanagement pervaded every department. Great Britain introduced, along with her supremacy, the principle of self-government, and at once the old skin was cast off. Under the present Emperor the dependencies of France are doubtless better governed. But who will answer for his life?—and after him the flood. France is almost as liable to internal storms as the cave of Eolus. See Elliott Warburton's *Hist. Canada*.

## LETTER XIV

The first transient successes of the war, added to the provocation given by the employment of Hessian mercenaries by the British Ministry, enabled the revolutionary party to carry their point.

Dire have been the results of that movement on what were the Southern Colonies. Their liberty and prosperity were confounded in the same ruin. A syncope seized the entire body. Virginia had been the Old Dominion, an honored and flourishing member of the empire. After a short interval, during which she existed as a free commonwealth, she was, through the instrumentality of an elaborate constitution, degraded into a bondswoman of New England, which had been sustained by bounties from the royal treasury, and patronized by Southern planters for its enterprising slave merchants. Such are the vicissitudes which attend nations!

“O change beyond report, thought, or belief!”

But for that event, as far as the destiny of nations can be foreseen, the Commonwealth of Virginia, with uncontracted limits, would have presented a picture of prosperity, such as is now witnessed in the Canadas, but in degree infinitely surpassing anything that is to be found there. Under the indulgent patronage of the British Government, they have, in the British Provinces of North America, a federal government, which will be corrected and improved as circumstances demand. It is thus that Great Britain is training up these communities for the period of national maturity. Perhaps, under the same benign influence, we might have had here in the South a similar system. But why stop to indulge in vain reverie?

The ligaments which bound the American Republics to the British Union were severed, and the leaders by whose hands it was done have been with us the subjects of unceasing eulogy. The deed proclaimed them bold men, but before they receive from posterity the laurel reserved for the wise, it should be established that they have conferred a correspondent blessing on their country. They surpassed, indeed, the exploit of him who burned the Ephesian temple; but was it theirs to imitate the skill of the artist who erected another in its place? It is one thing to be the architects of ruin, but quite another thing to be the architects of construction.

The States, jealous of their new sovereignty, when they came to the

construction of a federal government to replace the old connexion, discovered a strong disinclination to part with power. The vision of a well-organized and powerful central government which had danced before them, was discovered to be a spectral illusion which they could not sieze—a shadow that mocked and eluded them. Thus it is that the dreams of statesmen, as well as of poets, flit into thin air. Then first sprung into existence the States Rights and Federal parties, which continued, with various fortunes to divide the opinion of the country, until they finally divided the country itself.

The large States sought power in the new government in proportion to their magnitude, their population, and their wealth, or taxation; but the small States were loth to be swallowed up in the vortex of federal power, which they said was only a bloodless and gradual conquest, and they therefore strenuously insisted that the principle of sovereignty, which existed equally in a small as in a great body, entitled them to an equal representation in the common government. The South, too, as thoughtful men had anticipated, was arrayed against the North, and the North against the South, on the delicate and important questions of contribution and representative power. The North urged that slaves, of which the South had a great many, whilst they had very few, ought not to be represented in the new government—a freeman's republic they called it—because the negro could neither fight nor vote; but the South contended that as her slaves would, to a great extent, create the wealth with which the war would be carried on and the federal government itself be supported, they were in justice as well entitled to be taken in the representative estimates; as the white laborers of the North, who occupied a corresponding position.

Thus divided on the primary principles of their establishment, they could do nothing, the South not having yet been taught the valuable secret of making “a compromise” by which the matter in dispute is yielded, and things had to drag along as they best could, the States undertaking to work a federal system without a federal constitution;—a plan, however, not worse for the South than the one at a later period adopted, of living under a constitution of which the stronger party had the exclusive power of construction.

A constitution was, however, after the lapse of several years, agreed to, and towards the end of the war proclaimed. But when tried it was found to be so imperfectly developed in important respects, that the machine would not work. So defective was that first experiment, that the government was pronounced to be fit neither for war nor peace,\* and to resemble a man moving on crutches. Anarchy prevailed in the

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\* Alexander Hamilton.

federal system, and civil disturbances, and at length civil war, began to convulse the North. Men began to say that it would be well to return to the old English fold—this especially in New England, where they mightily missed the fishing bounties. The patriots were dismayed and crest-fallen, and began to open their eyes to the truth, that whilst it was very easy to make a government, it was extremely difficult to make a good one, particularly where so many wills had to be consulted. At length tardy justice was done to their old opponents, the moderates, whom they had mocked and stigmatized as “kings’ men,” and hunted from their homes, driving them, where they could not intimidate or buy them, into penury and exile.

The grand convention, however, extricated the States from their pressing dangers, not by amending the existing constitution, whose faults they had learned, as we have already seen, but by making, from turret to foundation, a new one—that imperial national constitution which converted the Southern republics into vassals of the North, and from which we are with one hand fighting to be free, whilst with a laudable consistency we hold fast to it with the other.

These repeated failures in the federal experiment, so clearly predicted a hundred years ago, begin to turn the thoughts of some men to a simple monarchy, while the thoughts of others tend towards a European connexion, by which to prevent the recurrence of destructive intestine troubles; these being willing to sacrifice something of popular liberty and a separate existence to political stability. But, sir, we will not be dismayed! The penalty incurred by that generation has been paid by this; the bond has been satisfied; and perhaps Providence may accept the expiation of this war for the political errors of our forefathers. We will put away our own vain imaginations, and, acknowledging the extreme difficulty of constructing, even under the most auspicious influences, a stable republic, will, with docility and reverence, listen to the inspired Pythoness of the Past, the only one of the Oracles not now dumb.

In the treasury of our knowledge there has been gathered so great a fund of political experience, that we may perhaps be able to form a confederate government, whose every part will have been sufficiently tested; for, as part of our own wealth of experience, we may rightly reckon that of a cotemporary nation, obtained while striving after and finally securing those stable institutions of liberty which have taken form and excellence under our own eyes. But in using these treasures a special discretion is required; else the wisdom of experience will be changed in our hands into the folly of experiment. We must be as wary when we borrow from the English Constitution as when we borrowed from the English laws; taking only such things as are suitable to the condi-

tion of our country and the character of our people. A rash imitation of the institutions and laws of foreign countries has ever been considered the mark of a light, inconstant people; yet it was reckoned a stroke of wisdom in the Roman Senate to send commissioners abroad, to collect such things as were deemed worthy to be incorporated into the Roman State. From this original sprung the laws of the Ten Tables, the basis of Roman jurisprudence.

Nothing, I repeat, should be admitted into our constitution and receive the stamp of public authority, that has not been passed through the crucible of experience. As has been observed with great force and truth of untested political theories, "No difficulties occur in what has not been tried. Criticism is almost baffled in discovering the defects of what has never existed; and eager enthusiasm and cheating hope have all the wide field of imagination in which they may expatiate with little or no opposition."

You will agree, perhaps, that one of the most solid securities against a convulsive revolution, and indeed any revolution except such as ought to occur, that could be desired in governments like our own, a security as well against mal-administration as against oppression, would be with precision to declare the relations of the parties to the government—nay, on the very forehead of the Constitution, in characters of living light, to imprint the primordial, inalienable and unalienated Right of Secession; and, going a step farther, to effectuate this sovereign, bloodless cure for all the ills of government by designating the mode in which that right should be exercised. Thus acknowledged and secured, the right of secession would act as a restraint upon the aggressions of power, more effectual than all the homilies of "the Farewell Address," and all the paper barriers engendered in the fertile brain of Mr. Madison; whilst the inconveniences which always must attend revolutionary changes, will assuredly prevent any rash and inconsiderate resort to that remedy. Like the *ultima ratio regum*, that remedy would only be resorted to after all other remedies had failed. Thus viewed, the right of secession deserves to be placed in the highest rank of conservative, constitutional principles, as I shall now establish by one of the most sublime events in the history of nations.

Who does not remember the origin of the Tribunitian Power, the palladium of Roman liberty, and that it sprang from an exercise of the right of secession? Unable to endure the oppressions of the Roman aristocracy, the commonalty, as better than a civil war, adopted the heroic resolution to dissolve the social compact with the Patricians and withdraw, or, as we would say, secede from the Roman State. They took their families, their household goods, their slaves, their cattle and their arms, and marched out of the city to the Sacred Mount,

as ever after it was called, there to found a new commonwealth, leaving the silent streets and deserted temples to their oppressors. Did Rome sink down destroyed by this unnatural division of her body? No! Compromise ensued, the Tribunitian veto was introduced into the Roman Constitution, civil dissensions were quelled, and Rome became the mistress of the world, spreading her civilization everywhere and sending down to us, in the sacred vessels of her literature, the evidences of her wisdom and her power.

Look again, sir! Is not the right of dissociation as deeply laid in the equity of nature, as the right of association? Whence is derived, from what code of written or unwritten law, the right of one generation, at the best but a life-tenant, to try those associated experiments, without providing a mode by which, in the event of their failure, the false step may be recovered without invoking the aid of the sword? For us, who have experienced the evil results of such inconsiderate action, not to leave the door of secession ajar, would be as wicked as it would be improvident.

The right of expatriation and the right of secession, are they not kindred principles? Are they not twin-born? No enlightened nation, whatever obsolete codes may declare, now denies the right of expatriation. It may be denied among the Mongolian nations, but not in Christendom. Even the relentless despotism of Russia, half Asiatic as it is, admits this right to all but her serfs. This broad door has been flung open, by which individuals may retreat and seek in foreign lands that happiness and freedom denied them at home. We will not, surely, deny to sovereign States a franchise that may be exercised by the lowest Dutch peasant?

The right of secession was capable of being deduced by a clear process of reasoning from the Constitution of the United States. But that which is the subject of argument, may always be made the subject of doubt. It was doubted; it was denied. The whole North doubted and denied your right of secession; and such is the perversity of the human mind, many worthy people in the South doubted too. What was all your logic worth? Let your beleagured capital and the bloody plains of Manassas answer!

But there is a living, breathing example, not yet embalmed in the folios of history, which I now invoke. Will the admirers and defenders of the old Revolution forgive me, when I pronounce the name of Canada, as one of those fixed lights by which we may navigate our ship? The declaration has been made by the home-government, that whenever the Canadians, by their constituted authorities, demand independence, it shall without delay be conceded them.\* They know this,

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\* Several years ago I saw, in an extract from a British periodical, a statement to this effect.

feel this, and it is this proud consciousness of freedom which unites the Canadas to the British empire by a magnetism which no other power could bestow.\*

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\* As a member of the British Union, but with a government as republican as that of Virginia, Canada, notwithstanding its rigorous climate, has thriven prodigiously in population and wealth—partaking, in full measure, of the staple virtues of the English Constitution, stability and liberty. There is no reverse side to this enchanting picture. With so kind and indulgent a patroness, Canada, though won by the sword, appears to be the especial favorite of Heaven. Not Grecian Helen, dissolved in beauty and in tears, received in her captivity such gentle usage, as this young Amazonian of the forest. Nor are there any draw-backs upon the public felicity;—no foreign connexions to be maintained, no army and navy to absorb the wealth and destroy the liberties of the nation; and whilst she enjoys an unrestricted interchange of commodities with the mother country, all the complicated arteries of her internal trade are opened by British capital—an auriferous shower that enriches the region upon which it descends.

The Canadians do not, it is true, elect a Governor General, but the British Ministry, under the supervision of the House of Commons, provide them with a far better one than stump-speaking, party conventions and universal suffrage would afford. The Governor General is, primarily, a *gentleman*—he has ability, social position, and respectable connexions, qualifications not by any means always united in our Presidents. Such a shame and imposture as Lincoln, or such an imbecile and obsolete old “Greek and Roman” as Harrison, could not be foisted on any one of the nations constituting the golden chain of the British Union. It is a fixed and determinate policy with the home-government not to send a distasteful deputy across the Atlantic to fret and annoy the people.

The history of Canada since the victory on the Heights of Abraham, is one of the brightest and most pleasing pages in the history of man, and more glorious to the British nation, than all the captive multitudes, princes and nobles that ever graced the chariot of a conqueror.

Our impressions of the British system are generally derived from our own revolutionary history, or the partial essays of our periodical press; whilst we do not stop to consider the violent perturbation in the colonial system produced, in the reign of George the Third, by efforts to introduce new and despotic principles, which were defeated by the American Revolution. That event led to the establishment of the liberal and manly principles of Burke. But let it not be supposed that an actual revolution, involving the independence of the American Colonies, was necessary to defeat the schemes of innovation patronized by the Ministry. A rigorous and determined and belligerent resistance would have produced as well the abandonment of that policy—as the rejected overtures of the British Crown positively establish.

This note is already long, but to substantiate some of its statements, I will add the summary given by a British writer of the advantages which Canada enjoys as a member of the British Empire. “What essential privileges” (demands this writer). “would the colonies command beyond those they now enjoy, if they were either independent, or a section of the United States of America? How would it affect their civil rights? They freely elect their representatives, have thus a voice in legislation, are taxed by their own consent, and have a

Mr. Calhoun, in that one of his works, which will be handed down to remotest posterity, very wisely says, that there are, after all, but two descriptions of government—the one founded on force, the other on the consent of the governed. I take it that that noble philosopher means, not only consent in the origin, but consent in the continuance of the government; for the same soul which animates the infant, sustains and directs the man. I am convinced, sir, that after the war, this principle will be introduced in the Constitution—for we will not have the Bourbons then to govern us.

Better than not to proclaim the right of secession, or than cunningly to leave it subject to debate, would it be, to take a step in the opposite direction, and provide means for the expulsion from the Confederation of refractory and disobedient members. Our Constitution, then, would rest on the immutable, christian principles of love and attraction, which bind the Universe together and support God's throne, instead of the gross, heathen principle of coercion.

“By winning words to conquer willing hearts,  
And make persuasion do the work of fear.”

The Articles of Confederation asserted the sovereignty of the States, which implied the right of secession, and contained a provision in the spirit of that right, which might with advantage be restored to life. “*Every State*,” it was provided, “*shall always keep up a regular and well-disciplined militia, sufficiently armed and accoutred, and shall*

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direct control over all public moneys. Would they have more in this respect? In the exercise of their religion they are perfectly free; all sects and all denominations are not only tolerated, but protected. In their Judiciary they sit as judges or juries, and their lives and their property are thus in their own hands. Their laws are defined and their burthens are extremely light—indeed, direct taxation is almost unknown, and, in fact, unnecessary in the colonies. The onus of their defence falls upon the mother country, and, although she commands for this boon the control of her colonial commerce, that control is not injurious, since, by throwing open the home markets to their produce, the best opportunities and means are probably thereby given to the colonists, for its sale. They also enjoy several privileges in the British markets, which they might not have in foreign ones, and it is therefore problematic, whether the trade and commerce of those colonies would be very materially improved by a more extended sphere of trade, under other circumstances.”—*Bouchette's British Dominions in North America*, vol. ii, p. 246.

The following opinion of an officer of the highest rank and distinction in the Confederate army, is a strong and valuable confirmation of these views: “I consider that few people in the world can be more fortunate in their government than the British Colonies in North America.” General JOSEPH E. JOHNSTON, as quoted in “Three Months in the Southern States,” by Lieut. Col. FREEMANTLE, Coldstream Guards.



*provide and constantly have ready for use, in public stores, a due number of field pieces and tents and proper quantity of arms, ammunition and camp equipage."*—(Art. 6, sec. 4.)\*

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\* In addition, would it not be well to require of every schoolmaster and the trustees and governors of every college, to take a license, conditioned to teach a stipulated portion of the tactics, with the arithmetic and grammar? We have a martial destiny, and, surrounded by powerful neighbors, will have to imitate the Lacedemonians and mould our young men into a warrior race. The invincible firmness, military discipline and self-control of the Spartans merited all praise and are worthy of our emulation; but we need not imitate them so far as to abolish domestic life, introduce white slavery or iron money, or unmask female beauty to our martial youth.

## LETTER XV

The Constitution of 1787 certainly deserves applause for its enumeration of granted powers. One of its great faults, perhaps its greatest fault, was that it instituted no adequate securities against the perversion of those powers from the objects of the grants. Its framers contrived what they hoped would be a sectional equilibrium, but left it to chance, or rather to the Northern majority, which they took care to establish at first in the government, to determine to which side the balance should incline, in the event that the shifting equilibrium should miscarry.\* Had that plan succeeded, it would have changed the destiny of America; population would have covered the teeming South, and commerce would have been left free to erect her emporium on the waters of the Chesapeake.

The range of powers which the Confederate Government will require will be at least equal to those which it now has, and a security for their discreet and patriotic exercise may be found in the concurrent majority of two-thirds—a principle contained in the Articles of Confederation; but to avoid evasion, that majority ought to be applied to *all* cases.†

Craving your indulgence for having occupied so large a portion of your leisure, I will now close these hurried letters; first observing, however, that in this country, where the political fabric rests so exclusively on the heaving billows of opinion, the unalterable principles of govern-

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\* I take the liberty again to refer to "The Lost Principle" for evidence of the sectional equilibrium.

† "The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisals in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled."—*Art. Conf., Art. 9, Sec. 6.*

Mr. Henry attached great value to this provision, but he had no confidence in the adroit plan for balancing the sections contained in the U. S. Constitution. When the latter was adopted by the Virginia Convention of 1788, he said "the balance of the American Union is destroyed," and so it proved to be.

ment, in order that there should have been imparted as much of fixedness as possible to that fluctuating basis, ought, one might suppose, to have been taught in all our seminaries of learning, in connexion with the wide diversity of historical examples. In all other countries of the globe, which civilized man inhabits—certainly in most of the States of Christian Europe—government fastens to, and is finally connected with, the institution of property, and in all is protected by the strongest physical barriers. The British Constitution, after philosophy exhausts itself, is found to owe no little of its old stability to these causes. But the political edifices of America, on the permanency of which the prosperity and happiness of so many millions depend, are made to rest on moral supports alone. Exposed as they have been to the caprice of an uninstructed, unfixed, chameleon opinion, they have been demolished and rebuilt, to accommodate at one time the convenience of certain influential characters, at another the whimsies of a plausible philosophy. In no civilized country of modern times have the elements of a sound political science been as little attended to as with us. However strange this may appear, it is yet emphatically true. When Mr. Calhoun's immortal essay appeared, even educated men were for the most part as little informed as to the proper basis of a representative government (except in so far as they had caught the scattered lights from the speeches and conversations of that great philosopher and orator) as they are at the court of an African Prince.

The truth is, sir, that government, as much as chemistry, or mechanics, or medicine, is an experimental science, and as fairly falls within the scope of the Baconian philosophy. To call into sudden existence a constitutional government, suited to a large and wealthy community, would require a full knowledge of the nature of man and his complex and diversified affairs. But what convention, unless it were a synod of gods, could possess such wisdom and wonderful attainments without the lights of actual development? Besides, impalpable and unseen forces are from time to time springing up, too subtle to be grasped, yet too powerful to be resisted, which imperatively demand a renovation and re-adaptation of the fundamental law; and it would be not more practicable, by mere intellectual vigor, to devise such modifications as the new wants of society demand, than to originate a well adapted government.

"We must not," saith Bacon "arrogantly search for the sciences in the narrow cells of human wit, but humbly in the greater world." Until our statesmen, those leading spirits, I mean, who stand at the helm in stormy weather, are grounded in this primary, elementary truth, and with the humility which always attends great minds, learn to estimate, at their true value, their own untried theories, as well as

the reveries of others, comprehending and acknowledging the feebleness of our intellectual powers and the confined limits assigned them by their creator, our country, rocked by a continual tempest, and building first on one sand-bank and then upon another, will be the sport of fortune and play-thing of revolution.\*

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\* To those who would occupy themselves in the serious and delicate business of making or repairing a government, the following weighty reflections of Mr. Burke are commended: "Political arrangement, as it is a work for social ends, is to be only wrought by social means. There mind must conspire with mind. Time is required to produce that union of minds which alone can produce all the good we aim at. Our patience will achieve more than our force. If I might venture to appeal to what is so much out of fashion in Paris, I mean to experience, I should tell you that in my course I have known, and, according to my measure, have co-operated with great men; and I have never yet seen any plan which has not been mended by the observations of those who have been much inferior in understanding to the person who took the lead in the business. By a slow but well-sustained progress, the effect of each step is watched; the good or ill success of the first gives light to us in the second; and so from light to light we are conducted with safety through the whole series. *We see that the parts of the system do not clash.* The evils latent in the most promising contrivances are provided for as they arise. One advantage is as little as possible sacrificed to another. We compensate, we reconcile, we balance. We are able to unite into a consistent whole the various anomalies and contending principles that are found in the minds and affairs of men. From hence arise not an excellence in simplicity, but one far superior—an excellence in composition. Where the great interests of mankind are concerned through a long succession of generations, that succession ought to be admitted to some share in the councils which are so deeply to affect them. If justice requires this, *the work itself requires the aid of more minds than one age can furnish.* It is from this view of things that the best legislators have been often satisfied with the establishment of some sure, solid, and ruling principle in government; the power like that which some of the philosophers have called a plastic nature; and having fixed the principle, they have left it afterwards to its own operation. To proceed in this manner, that is, to proceed with a presiding principle, and a prolific energy, is with me the criterion of profound wisdom. What your politicians think the marks of a bold, hardy genius, are only proofs of a deplorable want of ability. By their violent haste and their defiance of the process of nature, they are delivered over blindly to every projector and adventurer, to every alchymist and empirick. They despair of turning to account anything that is common."—*Reflections on the Revolution in France.*

These reflections of Mr. Burke, so forcibly pointing out the difficulties of the science of government, are well fitted to introduce the question, whether it would not be sound policy to establish a Professorship at the University of Virginia devoted to that science alone. When I knew the University of Virginia, the attention given to this study was little enough! The numbers of the *Federalist* and the *Resolutions and Report of '98*, administered, I suppose, as antidotes to each other, about constituted the course. Under the recent able and brilliant professorship of Mr. Holcombe, the subject of Government received

I have been informed, a fuller development; but even with him it was but an appendage to the law ticket, enough of itself to occupy the time and thoughts of a single professor. Government, in its own nature, has no stronger connections with the law than with other branches of knowledge. It is entitled, from its great importance, to a separate professorship, and that its benefits might be widely diffused, it ought to take its place in the accademical course.



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Very respectfully,

ARNOLD ELZEY,  
*Major General.*

Approved and respectfully recommend to the favorable consideration of the Secretary of War.

S. COOPER,  
*Adj't. and Ins. Gen'l.*

*November 19, 1863.*

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